

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RONALD E. BURT, #N-60788,
Plaintiff,

vs. Case No. 13-cv-00794-NJR-DGW

J. BERNER, et al.,
Defendants.

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Deposition of  
FRANK O. PETKOVICH, M.D.

May 11, 2017

9:31 A.M.

Taken at:  
Petkovich Orthopedic and Spine Care, LLC  
2821 North Ballas Road, Suite C70  
St. Louis, Missouri

J. Bryan Jordan, CCR-MO



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| <div>Page 2</div> <div>1 APPEARANCES:<br/>2 On behalf of the Plaintiff:<br/>    Lewis Rice LLC, by<br/>3     RONALD J. NORWOOD, ESQ.<br/>    BENJAMIN A. LIPMAN, ESQ.<br/>4     600 Washington Ave., Suite 2500<br/>    St. Louis, MO 63101-1311<br/>5     (314) 444-7600 Phone<br/>    (314) 444-7759 Direct<br/>6     (314) 612-7759 Direct Fax<br/>    morwood@lewisrice.com<br/>7     blipman@lewisrice.com<br/>8 On behalf of the Defendants Sam Nwaobasi, M.D.,<br/>    Michael Moldenhauer, John Trost, Lakesha Hamby and<br/>9 Wexford Health Sources, Inc.:<br/>    Cassiday Schade LLP, by<br/>10     TIMOTHY P. DUGAN, ESQ.<br/>    EDWARD A. KHATSKIN, ESQ.<br/>11     100 North Broadway, Suite 1580<br/>    St. Louis, MO 63102<br/>12     (314) 241-1377 Phone<br/>    (314) 241-1320 Fax<br/>13     tdugan@cassiday.com<br/>    ekhatskin@cassiday.com<br/>14<br/>15 On behalf of Defendants Richard Harrington,<br/>    Angela Crain, Chad Friedrich, Kimberly Butler:<br/>    Illinois Attorney General's Office, by<br/>16     MAX BOOSE, ESQ.<br/>    Assistant Attorney General<br/>17     500 South Second Street<br/>    Springfield, IL 62706<br/>18     (217) 782-1090<br/>    mboose@atg.state.il.us<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</div> | <div>Page 3</div> <div>1           TRANSCRIPT INDEX<br/>2<br/>3 APPEARANCES ..... 2<br/>4<br/>5 INDEX OF EXHIBITS ..... 4<br/>6<br/>7 EXAMINATION OF FRANK O. PETKOVICH, M.D.:<br/>8 BY MR. NORWOOD ..... 6<br/>9 BY MR. DUGAN ..... 133<br/>10 BY MR. BOOSE ..... 139<br/>11 BY MR. NORWOOD ..... 141<br/>12 BY MR. BOOSE ..... 152<br/>13<br/>14 REPORTER'S CERTIFICATE ..... 155<br/>15<br/>16 EXHIBIT CUSTODY<br/>17 EXHIBITS RETAINED BY COURT REPORTER<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</div> | <div>Page 4</div> <div>1           INDEX OF EXHIBITS<br/>2   NUMBER       DESCRIPTION       MARKED<br/>3 Petkovich 1 -- Deft's Rule 26(a)(2) Expert<br/>    Disclosures re: Dr. Petkovich ..... 6<br/>4<br/>5 Petkovich 2 -- Three pages from Dr.<br/>    Petkovich's website ..... 66<br/>6 Petkovich 3 -- American Academy of<br/>    Orthopedic Surgery booklet titled<br/>7   "Spine Basics" ..... 86<br/>8 Petkovich 4 -- American Academy of<br/>    Orthopedic Surgery booklet titled<br/>9   "X-rays, CT Scans and MRIs" ..... 89<br/>10 Petkovich 5 -- American Academy of<br/>    Orthopedic Surgery booklet titled<br/>11   "Neck Pain" ..... 97<br/>12 Petkovich 6 -- American Academy of<br/>    Orthopedic Surgery booklet titled<br/>13   "Cervical Radiculopathy (Pinched<br/>    Nerve)" ..... 109<br/>14<br/>15 Petkovich 7 -- American Academy of<br/>    Orthopedic Surgery booklet titled<br/>    "Herniated Disk" ..... 111<br/>16<br/>17 Petkovich 8 -- American Academy of<br/>    Orthopedic Surgery booklet titled<br/>18   "Cervical Spondylosis (Arthritis of<br/>    the Neck)" ..... 113<br/>19 Petkovich 9 -- American Academy of<br/>    Orthopedic Surgery booklet titled<br/>20   "Lumbar Spinal Stenosis" ..... 116<br/>21 Petkovich 10 -- Spinal Cord Tumor<br/>    Association, Inc., article titled<br/>22   "Tony M.'s Story" ..... 127<br/>23 Petkovich 11 -- Report on 10/24/1996 exam of<br/>    Plaintiff by Dr. Silberstein, Bates<br/>24   No. MEN 00643 ..... 27<br/>25</div> | <div>Page 5</div> <div>1           INDEX OF EXHIBITS (CONTINUED)<br/>2   NUMBER       DESCRIPTION       MARKED<br/>3 Plaintiff's 3 -- Article titled<br/>    "Degenerative Disc Disease Treatment<br/>4   Guidelines" (Marked in previous<br/>    deposition) ..... 122<br/>5<br/>6 Plaintiff's 4 -- Article entitled "Cervical<br/>    Disc Pathology and Artificial Disc<br/>    Surgery" (Marked in previous depo).. 126<br/>7<br/>8 Plaintiff's 11 -- Article entitled "Cervical<br/>    Degenerative Disc Disease" (Marked<br/>    in previous depo) ..... 122<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</div> |
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| <p style="text-align: right;">Page 6</p> <p>1 FRANK O. PETKOVICH, M.D.,<br/>2 of lawful age, having been first duly sworn to testify<br/>3 the truth, the whole truth, and nothing but the truth<br/>4 in the case aforesaid, deposes and says in reply to<br/>5 oral interrogatories propounded as follows, to-wit:<br/>6 EXAMINATION<br/>7 QUESTIONS BY MR. NORWOOD:<br/>8 Q. Good morning, sir. Would you state your<br/>9 name and, I guess, your office address for the record,<br/>10 please?<br/>11 A. First name is Frank, last name is Petkovich,<br/>12 P-e-t-k-o-v-i-c-h. I'm a physician, M.D., orthopedic<br/>13 surgeon. My office address is 2821 North Ballas Road,<br/>14 Suite C-70, St. Louis County, Missouri, 63131.<br/>15 Q. Thank you, Doctor. I've handed you a<br/>16 document, Petkovich Deposition Exhibit 1. Could you<br/>17 identify that item for us?<br/>18 A. This is a copy of my curriculum vitae as of<br/>19 January 2017. It has a copy of a report authored by<br/>20 me dated March 3, 2017, after I reviewed medical<br/>21 records and radiographic studies concerning a<br/>22 Mr. Ronald E.--<br/>23 Q. Burt?<br/>24 A. --Burt, and there also is a list of<br/>25 depositions of times I have been deposed over the last</p> | <p style="text-align: right;">Page 8</p> <p>1 A. Well, I really don't keep track of any of<br/>2 that. The majority--my practice, I've been in<br/>3 practice 37 years, and my practice has been as an<br/>4 orthopedic surgeon, spine surgeon, and I've taken care<br/>5 of a lot of, lot of people, taken care of a lot of<br/>6 work injuries, so I've been deposed many times in<br/>7 work-related conditions but also been deposed for<br/>8 other issues, and I just--I don't keep track of it.<br/>9 We don't differentiate. We're--right, now I'm, in my<br/>10 office here. We have a--we're a single-practice<br/>11 office, and we don't--there's a single-taxpayer ID<br/>12 number. Everything goes into that. We don't<br/>13 differentiate where it comes from.<br/>14 Q. Okay, and how much time do you spend,<br/>15 roughly, providing testimony, as opposed to your<br/>16 regular practice?<br/>17 A. As part of the my practice, probably 15 to<br/>18 20 percent of my practice involves performing<br/>19 independent medical evaluations and/or record reviews.<br/>20 Q. Okay. All right. Now, let's--let me direct<br/>21 your attention to the first page of Petkovich<br/>22 Deposition Exhibit 1, and on that, you state that as<br/>23 of, I assume, the day you put together the report, you<br/>24 had completed approximately 8.5 hours at a rate of<br/>25 \$350 per hour? Is that correct?</p> |
| <p style="text-align: right;">Page 7</p> <p>1 several years. I'm not sure how far back that goes,<br/>2 and I think that's--that's what is contained here.<br/>3 Q. Okay, and let me start, I guess, by talking<br/>4 about the cases you've testified. You've testified in<br/>5 a number of cases over the years; is that correct?<br/>6 A. Yes.<br/>7 Q. And it looks like the lion's share of those<br/>8 cases were workers' compensation cases?<br/>9 A. Yes.<br/>10 Q. And in those workers' compensation cases,<br/>11 did you testify on behalf of the employer or the<br/>12 employee?<br/>13 A. I testify to whoever requests me, deposes<br/>14 me. I don't differentiate whether I'm requested by an<br/>15 employer or employee. I don't differentiate.<br/>16 Q. Right, I understand, but is the bulk of them<br/>17 employer-related testimony, do you know, or--<br/>18 A. Pretty much--<br/>19 Q. --pretty much even down the middle?<br/>20 A. I don't keep track of it, sir.<br/>21 Q. Got you. No problem at all, and then what<br/>22 about outside of workers' compensation cases? I saw a<br/>23 couple of personal injury cases. Is that a small<br/>24 portion of what you do with respect providing expert<br/>25 testimony?</p>                | <p style="text-align: right;">Page 9</p> <p>1 A. Yes. Now, where are you reading from, sir?<br/>2 Q. From the first page of Exhibit 1; first<br/>3 page, right there. It's right there on the--if you<br/>4 look down at the bottom, the third line up from the<br/>5 bottom, item,--<br/>6 A. I see.<br/>7 Q. --Roman VI.<br/>8 A. Yes, I see what you are saying.<br/>9 Q. Okay.<br/>10 A. Yes, that's a list of hours, and I didn't<br/>11 add them up, but it's a list, here, of the hours that<br/>12 I involved, so--<br/>13 Q. Okay, could you--so you have a separate list<br/>14 that you keep with your handwritten notes? Is that<br/>15 correct?<br/>16 A. Well, I just have--I have my office--I have<br/>17 my office charges, and I have the notes when I, when<br/>18 I reviewed the records, I have the summary of the<br/>19 hours involved.<br/>20 Q. All right, so as we sit here today, how<br/>21 much--how many hours have you expended as it relates<br/>22 to your work associated with this particular case?<br/>23 A. Let me add it up in my head, here.<br/>24 Q. Okay.<br/>25 A. So--</p>                                                                                                                                                                                                                                                                                                             |

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| <p style="text-align: right;">Page 10</p> <p>1 (Pause)</p> <p>2 I think 8.--eight and a quarter.</p> <p>3 Q. Eight and a quarter; okay.</p> <p>4 A. Is that what you have?</p> <p>5 Q. 8.5, give or take. We round it off, so of</p> <p>6 that eight and a quarter, could you provide us with a</p> <p>7 breakdown in terms of what that eight hours</p> <p>8 represents?</p> <p>9 A. The records that I reviewed, I reviewed</p> <p>10 medical records concerning Mr.--Mr. Burt, Ronald Burt.</p> <p>11 I initially reviewed records for three and a half</p> <p>12 hours on February 4,--</p> <p>13 Q. Okay.</p> <p>14 A. --2017.</p> <p>15 I then had a conversation with attorney</p> <p>16 Mr. Edward Khatskin on February 7 for 1.34 hours.</p> <p>17 Q. Okay.</p> <p>18 A. I then did further record review on March 2,</p> <p>19 2017, for three hours.</p> <p>20 Q. Okay.</p> <p>21 A. I then authored a narrative report on March</p> <p>22 3, 2017.</p> <p>23 Q. Okay, and let's talk about your meeting with</p> <p>24 Mr. Khatskin. What did you and he discuss during that</p> <p>25 1.3 or so hours that you met?</p>                                                                                                                                                                                                                                                                                                    | <p style="text-align: right;">Page 12</p> <p>1 A. No, sir, not--not that I can recall offhand.</p> <p>2 Q. Okay. Now, we got your CV and your resumé.</p> <p>3 Are you considered a specialist?</p> <p>4 A. I'm a--I'm an orthopedic surgeon.</p> <p>5 Orthopedic surgery is a specialty in medicine, as you</p> <p>6 know, that deals with the musculoskeletal system, so</p> <p>7 orthopedics is a specialty of medicine that deals with</p> <p>8 the musculoskeletal system, i.e., the muscles, bones,</p> <p>9 and joints of the upper and lower extremities and the</p> <p>10 spine.</p> <p>11 Q. Okay.</p> <p>12 A. So my educational background, I graduated</p> <p>13 from St. Louis University Medical School 1973, grew</p> <p>14 up--before that, I grew up in the City of St. Louis,</p> <p>15 graduated from the St. Louis Public School System.</p> <p>16 I then graduated from the University of</p> <p>17 Missouri-St. Louis 1969, graduated from St. Louis</p> <p>18 University Medical School in 1973.</p> <p>19 I then completed an internship and general</p> <p>20 surgery residency at the University of</p> <p>21 Illinois-Chicago in '74.</p> <p>22 I then completed an orthopedic surgery</p> <p>23 residency at the University of Missouri-Kansas City in</p> <p>24 1980.</p> <p>25 I then completed a spine fellowship at</p>                                                                                                              |
| <p style="text-align: right;">Page 11</p> <p>1 A. We discussed the medical records that I had</p> <p>2 reviewed which I had previously reviewed regarding</p> <p>3 Mr. Ronald Burt.</p> <p>4 Q. Okay, and what did he tell you with respect</p> <p>5 to those medical records, as best you can recall?</p> <p>6 A. I'm not sure what he told me versus what I</p> <p>7 gained from reviewing the records, but we--</p> <p>8 Q. As best you can recall.</p> <p>9 A. It was going, going through the records--</p> <p>10 well, after my going through records and discussion</p> <p>11 with him, that Mr. Burt is a, is a prisoner in the</p> <p>12 State of Illinois, in the prison system there, and</p> <p>13 that Mr. Burt had--is 50 years old; that Mr. Burt had</p> <p>14 been seen at the medical facility, there, a number of</p> <p>15 times with complaints of pain in his neck and pain in</p> <p>16 his lower back.</p> <p>17 He had seen a number of different healthcare</p> <p>18 providers at that facility and apparently, apparently,</p> <p>19 he was unhappy with some of his treatment and had a</p> <p>20 grievance for that reason.</p> <p>21 Q. Okay. Anything else you can recall about</p> <p>22 that discussion between you and Counsel?</p> <p>23 A. Well, I think, I think what I've just said,</p> <p>24 that's kind of a synopsis, as I recall.</p> <p>25 Q. Okay, anything else that you can recall?</p> | <p style="text-align: right;">Page 13</p> <p>1 Tulane University in New Orleans, and then I've been</p> <p>2 in practice as an orthopedic surgeon and spine surgeon</p> <p>3 in St. Louis since 1980, July 1980, so my specialty is</p> <p>4 an orthopedic surgeon. I have a subspecialty of</p> <p>5 spinal surgery.</p> <p>6 Q. Okay, and what would cause a patient to be</p> <p>7 referred to you, as opposed to going to, say, a</p> <p>8 general practitioner?</p> <p>9 A. Well, typically, somebody would be referred</p> <p>10 to me if they had a--if they had a musculoskeletal or</p> <p>11 spine complaint that had been refractory to treatment</p> <p>12 by a primary care physician, i.e., general</p> <p>13 practitioner, family practice physician.</p> <p>14 Q. When you say "refractory to treatment," for</p> <p>15 us lay people, what do you mean by that?</p> <p>16 A. Refractory means if someone, if someone</p> <p>17 had--if someone had persistent problems with, with</p> <p>18 radiographic and physical examination findings to</p> <p>19 substantiate their problems and subjective complaints,</p> <p>20 so if someone had persistent problems, despite</p> <p>21 conservative management by a primary care physician</p> <p>22 and they had radiographic evidence and physical</p> <p>23 findings evidence, then, then they would be referred</p> <p>24 to a specialist.</p> <p>25 Q. What kind of radiographic evidence would,</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 would typically accompany a referral to you? When you<br/>2 say "radiographic evidence," what do you mean?<br/>3 A. Well, that's a very, very broad question.<br/>4 Q. And I'm intending for it to be broad.<br/>5 A. Okay. Okay. Excuse me. A very broad<br/>6 question, so I don't know whether we're talking about<br/>7 spine conditions, are we talking about extremity<br/>8 conditions--<br/>9 Q. We'll, let's talk about spine,--<br/>10 A. Okay.<br/>11 Q. --since that's what why we're here today.<br/>12 A. So, okay, I'm sorry, so your question is,<br/>13 again?<br/>14 Q. When--you referred to patients being<br/>15 referred to you based on subjective complaints,<br/>16 radiographic evidence with respect to certain issues,<br/>17 and so what I'm trying to hone in on for us lay people<br/>18 is when you say "radiographic evidence," what are you<br/>19 referring to.<br/>20 A. Okay, radiographic evidence could be many,<br/>21 many things.<br/>22 Q. Okay.<br/>23 A. Actually, you could have--radiographic<br/>24 evidence could be--we're talking just about the<br/>25 spine--we're talking about the spine specifically?</p> | <p style="text-align: right;">Page 16</p> <p>1 Q. Okay, and when you say "persistent<br/>2 findings," are you familiar, I mean familiar with the<br/>3 term, "chronic condition"?<br/>4 A. Yes, I'm familiar with the word, "chronic."<br/>5 Q. What does chronic mean?<br/>6 A. Chronic means something that keeps going,<br/>7 that goes on and on, so that's what the word roughly<br/>8 means, chronic as opposed to acute. Chronic means<br/>9 something that goes on and on.<br/>10 Q. On and on for how long? Is there a time<br/>11 measure where you say "Well, this might be chronic"<br/>12 versus nonchronic? Is there a time frame, six months,<br/>13 something along those lines, that you would look at to<br/>14 determine chronic versus acute?<br/>15 A. I don't think--I don't think the word<br/>16 "chronic," itself, is really specifically defined.<br/>17 Q. Okay. All right, based on your review of<br/>18 Mr. Ronald Burt's medical records, would you define<br/>19 whatever he has been describing over the years as a<br/>20 chronic condition, whatever that condition might be?<br/>21 A. No.<br/>22 Q. Okay, so you would not categorize his<br/>23 complaints over some ten-plus years as something that<br/>24 you would state would be a chronic situation. Is that<br/>25 your testimony today?</p> |
| <p style="text-align: right;">Page 15</p> <p>1 Q. Yes, sir.<br/>2 A. It could be you could have a fracture, you<br/>3 have a fracture, you could have a dislocation,<br/>4 subluxation of the spine. Those are both conditions<br/>5 where things are out of alignment. You could have<br/>6 that. You've got an instability pattern. You could<br/>7 have erosion, bony erosion. You could have lytic<br/>8 lesions. You could have discogenic-type findings--<br/>9 Q. And those, when you say "radiographic," just<br/>10 that term, and just to kind of short-circuit it, that<br/>11 could be, I assume, x-rays, MRI's,--<br/>12 A. Yes.<br/>13 Q. --CT scans? Is that right?<br/>14 A. Yeah, "radiographic" encompasses all of<br/>15 those things,--<br/>16 Q. Okay.<br/>17 A. --yes.<br/>18 Q. All right, and so based on that, a doctor, a<br/>19 non-specialist, for lack of a better term, might refer<br/>20 somebody to you who specializes in spine-related<br/>21 conditions; is that correct?<br/>22 A. Yes, if, if someone had persistent--if<br/>23 someone was having persistent symptoms and physical<br/>24 findings, et cetera, et cetera, in conjunction with<br/>25 all of that.</p>     | <p style="text-align: right;">Page 17</p> <p>1 A. Yes.<br/>2 Q. Okay. All right, and as it relates to pain<br/>3 in the back and neck region, what would you describe,<br/>4 or rather, at what point would you describe subjective<br/>5 complaints of back pain and neck pain as a chronic<br/>6 condition?<br/>7 A. Well, I would take--number one, I wouldn't<br/>8 call--I don't necessarily equate subjective complaints<br/>9 with a condition.<br/>10 Q. Okay. All right.<br/>11 A. So in this case, I would say reading these<br/>12 records, going through Mr. Burt's records, he was seen<br/>13 on numerous occasions with persistent subjective<br/>14 complaints.<br/>15 Q. Right. Right.<br/>16 A. But I would not define that, I would not<br/>17 define him as having a specific condition.<br/>18 Q. Okay, so if other physicians, his treating<br/>19 physicians, for instance, described his condition as<br/>20 chronic, you would disagree with that assessment. Is<br/>21 that right?<br/>22 A. I would not consider what Mr. Burt was seen<br/>23 for as a chronic condition.<br/>24 Q. All right, and if he were prescribed various<br/>25 prescription drugs to treat whatever subjective</p>                                                                                                                   |

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| <p style="text-align: right;">Page 18</p> <p>1 complaints he was providing over the years, you would<br/>2 not consider the fact that he was prescribed those<br/>3 drugs for that condition as treatment for a chronic<br/>4 condition; is that correct?<br/>5 MR. DUGAN: Object to the form of the<br/>6 question.<br/>7 Go ahead, Doctor.<br/>8 A. It's my opinion in this case that Mr. Burt<br/>9 was prescribed low-dose antiinflammatory medications<br/>10 because of his subjective complaints of pain in his<br/>11 neck and his back, period. His radiographic studies<br/>12 show that he has some mild, very mild degenerative<br/>13 disc disease in his cervical spine, C4-5, and--some<br/>14 degenerative cervical disc disease and some<br/>15 degenerative lumbar disc disease at the L5-S1 level,<br/>16 so he has those two areas of some degenerative disc<br/>17 disease.<br/>18 You could use the word "degenerative disc<br/>19 conditions" if you wanted to use that word, but<br/>20 those--that's what he has.<br/>21 Q. Right.<br/>22 A. So those are, those are, those are, those<br/>23 are--he has those radiographically.<br/>24 Going through his records, he has no<br/>25 physical findings inconsistent with those radiographic</p> | <p style="text-align: right;">Page 20</p> <p>1 A. Okay.<br/>2 Q. Okay? And the only thing I want to know<br/>3 from your--in your professional opinion based on<br/>4 37-plus years of experience, whether or not<br/>5 degenerative disc condition, whatever might exist in<br/>6 your opinion as it relates to Dr. (sic) Ronald Burt,<br/>7 is a chronic condition.<br/>8 A. Yes, you--you are correct, those are--those,<br/>9 those are chronic, those degenerative disc conditions<br/>10 are chronic. They're not--they are non-acute.<br/>11 Q. Okay. All right.<br/>12 Now, as it relates to a specialist such as<br/>13 yourself, you consider yourself an orthopedist, or<br/>14 orthopedic surgeon, or how would you describe your<br/>15 area of specialty with respect to a name, just so I'm<br/>16 using the right nomenclature?<br/>17 A. I'm an orthopedic surgeon with a<br/>18 subspecialty in spinal surgery.<br/>19 Q. All right, so for a person, specialist such<br/>20 as yourself, under what circumstances could you become<br/>21 involved with a patient?<br/>22 A. I would be--I would be referred a patient,<br/>23 typically, that has a orthopedic--has an orthopedic<br/>24 condition, that has persistent subjective complaints<br/>25 with radiographic evidence and physical findings</p> |
| <p style="text-align: right;">Page 19</p> <p>1 findings; normal neurologic examination, no physical<br/>2 findings, so I would--<br/>3 Q. So--so let me cut you off. So you are<br/>4 saying, then, a degenerative disc condition would--<br/>5 could not or would not qualify as a chronic condition?<br/>6 A. Well--<br/>7 Q. Is that your testimony?<br/>8 A. No, sir. I'm sorry, first, I think that--<br/>9 let me clarify my--what I'm saying.<br/>10 So I think that in this case, Mr. Burt has<br/>11 some mild degenerative cervical disc disease and some<br/>12 mild degenerative lumbar disc disease. You could use<br/>13 that, you could say, you could also use the word<br/>14 "condition," so you could say "mild degenerative<br/>15 cervical disc condition,--<br/>16 Q. Right.<br/>17 A. --"mild degenerative lumbar disc condition,"<br/>18 you are correct. You can use--they're<br/>19 interchangeable.<br/>20 Now, if you want me--<br/>21 Q. Let me cut you off, though, because I'm just<br/>22 trying--I'm really--because we're short on time, and I<br/>23 just want to make sure I get my point out, and I<br/>24 understand you have a lot to say, but I'm focusing on<br/>25 the word "chronic."</p>                                     | <p style="text-align: right;">Page 21</p> <p>1 consistent with a significant problem that continues<br/>2 despite conservative management.<br/>3 Q. Would you get involved in a case if there<br/>4 were simply subjective complaints of pain and you<br/>5 received an x-ray that indicated there was no<br/>6 indication in the x-ray of any basis for those<br/>7 complaints of pain? Would you get involved in a case<br/>8 like that?<br/>9 MR. DUGAN: Object to form.<br/>10 A. I typically would not be referred a patient<br/>11 like that. I have had--I have had people come into my<br/>12 office that have self-referred.<br/>13 BY MR. NORWOOD:<br/>14 Q. Okay.<br/>15 A. Maybe I've treated members of their family<br/>16 before that have come in to me with subjective<br/>17 complaints not based upon anything else where they've<br/>18 really not seen anybody, in those situations where<br/>19 they have not seen a primary care provider prior to<br/>20 seeing me, yes.<br/>21 Q. Okay. All right. In your opinion, would a<br/>22 specialist be required to assess issues related to<br/>23 arthritis?<br/>24 MR. DUGAN: Object to form.<br/>25 A. No, a specialist does not have to diagnose</p>                                                                                                   |



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| <p style="text-align: right;">Page 22</p> <p>1 arthritis.</p> <p>2 BY MR. NORWOOD:</p> <p>3 Q. No, I didn't say diagnose arthritis. I</p> <p>4 guess what I'm trying to figure out is, are there</p> <p>5 occasions in your practice where you are referred</p> <p>6 individuals who have arthritic conditions?</p> <p>7 A. Yes.</p> <p>8 Q. All right, and in those circumstances, why</p> <p>9 would a person with arthritic conditions be referred</p> <p>10 to you?</p> <p>11 A. It would be referred to me if they had</p> <p>12 persistent subjective complaints and objective</p> <p>13 physical findings to substantiate those subjective</p> <p>14 complaints, and radiographic and other clinical</p> <p>15 studies to substantiate that.</p> <p>16 Q. To substantiate arthritis?</p> <p>17 A. To substantiate their subjective complaints</p> <p>18 in conjunction with everything I've said.</p> <p>19 Q. All right, so if somebody had arthritis, and</p> <p>20 they were complaining of pain in the spine and they</p> <p>21 had a diagnosis of arthritis, under what</p> <p>22 circumstances, then, would you get involved in a case</p> <p>23 like that?</p> <p>24 A. Well, you are using the word "arthritis,"</p> <p>25 which is a very, very broad term. Define, be more</p>                                                                                                                           | <p style="text-align: right;">Page 24</p> <p>1 Q. Okay.</p> <p>2 A. And if someone has--so if someone had--has</p> <p>3 degenerative disc disease, if they have persistent</p> <p>4 subjective complaints, they have objective physical</p> <p>5 findings on physical examination, meaning neurologic,</p> <p>6 neurologic findings, and they have radiographic</p> <p>7 evidence to, to again substantiate--to substantiate</p> <p>8 some significant degenerative disc disease.</p> <p>9 Q. Okay, and so--all right, what about</p> <p>10 scoliosis? Would someone be referred to you for</p> <p>11 scoliosis?</p> <p>12 A. Scoliosis is a curvature of the spine.</p> <p>13 Scoliosis does not typically cause pain, so there are</p> <p>14 different--there are different types of scoliosis. Do</p> <p>15 you want to be more specific in your question?</p> <p>16 Q. No, I mean as relates to when you would get</p> <p>17 involved with any level of scoliosis.</p> <p>18 A. Is a--okay, scoliosis, you start off in</p> <p>19 children with, you know, infantile scoliosis,</p> <p>20 idiopathic scoliosis, et cetera, in childhood, in</p> <p>21 adolescence, and that's--that's--that's what most</p> <p>22 people think of as scoliosis in that age bracket.</p> <p>23 Those--those patients I don't treat anymore. I'm</p> <p>24 referring those to pediatric spine centers, to</p> <p>25 universities here.</p> |
| <p style="text-align: right;">Page 23</p> <p>1 specific in your question. What type of arthritis are</p> <p>2 we talking about?</p> <p>3 Q. All right. Well, let's talk about</p> <p>4 rheumatoid arthritis. Is that something, would that</p> <p>5 be something that would come your way in the spine?</p> <p>6 A. Yes.</p> <p>7 Q. All right, and under what circumstances?</p> <p>8 A. If someone has a, has a established</p> <p>9 diagnosis of rheumatoid arthritis and they're having</p> <p>10 issues with their spine, and they've seen their</p> <p>11 primary care physician, they're having persistent</p> <p>12 problems, they have physical findings under physical</p> <p>13 examination and radiographic studies to--to show a</p> <p>14 problem, then they would be referred to me.</p> <p>15 Q. Okay, and--and what about osteoarthritis?</p> <p>16 A. Pretty much the same thing. They're</p> <p>17 different, very different, but again, someone that had</p> <p>18 persistent subjective complaints, clinical studies,</p> <p>19 physical findings, radiographic evidence, et cetera,</p> <p>20 despite conservative management.</p> <p>21 Q. Okay. What about degenerative disc disease?</p> <p>22 At what point would someone be referred to you with a</p> <p>23 diagnosis of degenerative disc disease?</p> <p>24 A. Degenerative disc disease is a form of</p> <p>25 degenerative arthritis.</p> | <p style="text-align: right;">Page 25</p> <p>1 Adults coming in, sometimes, people--</p> <p>2 sometimes, people would have severe, advanced</p> <p>3 degenerative disc changes as part of that degenerative</p> <p>4 change condition, develop some, some curvature as a</p> <p>5 result of those degenerative changes, so they would be</p> <p>6 treated, they would be treated just like anybody else</p> <p>7 with advanced degenerative disc disease, but that's--</p> <p>8 they would have some curvature as a result of those</p> <p>9 degenerative changes, but that's really not what</p> <p>10 scoliosis is.</p> <p>11 Q. How much curvature need there be before one</p> <p>12 would suggest that it is scoliosis?</p> <p>13 A. Well, you can have--you can have--there's</p> <p>14 not a number you can give as far as a specific degree.</p> <p>15 I mean, you can have, you can have scoliosis with a,</p> <p>16 with a, a 10-degree curve, you can get scoliosis with</p> <p>17 a 70-degree curve.</p> <p>18 Q. Right.</p> <p>19 A. Scoliosis is a--scoliosis is a disease where</p> <p>20 you have curvature of the spine.</p> <p>21 Q. What about a five-degree curvature? Would</p> <p>22 that be considered scoliosis?</p> <p>23 A. Well, that's what I'm trying to explain to</p> <p>24 you. I don't--that's--you can have, you can have true</p> <p>25 scoliosis with any degree curve.</p>              |

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| <p style="text-align: right;">Page 26</p> <p>1 Q. Any degree of curve; okay.</p> <p>2 A. But a curve is not--but just having a curve</p> <p>3 is not necessarily scoliosis.</p> <p>4 Q. Okay.</p> <p>5 A. So the point is, scoliosis causes curvature,</p> <p>6 but not all curvature is scoliosis.</p> <p>7 Q. Okay, so, then, that someone could look at</p> <p>8 an x-ray and see some level of curvature and at least</p> <p>9 suggest that that is an indication of scoliosis?</p> <p>10 MR. DUGAN: Object to form.</p> <p>11 A. I'm not sure what your question is.</p> <p>12 MR. NORWOOD: Could we read that one back?</p> <p>13 THE COURT REPORTER: (Reading back)</p> <p>14 "Q: Okay, so, then, someone could look</p> <p>15 at an x-ray and see some level of curvature and at</p> <p>16 least suggest that that is an indication of</p> <p>17 scoliosis?"</p> <p>18 A. Yes, somebody--you can look at an x-ray and</p> <p>19 put everything together, you can--you can go through</p> <p>20 your mind, whoever is reading the x-rays can think</p> <p>21 that, could question if there's a degree of scoliosis,</p> <p>22 yes.</p> <p>23 BY MR. NORWOOD:</p> <p>24 Q. I guess my question is, can--can reasonable</p> <p>25 physicians disagree with respect to whether or not</p>                                                                                                                                                                                            | <p style="text-align: right;">Page 28</p> <p>1 MR. NORWOOD: Is that page 643? Let's see.</p> <p>2 MR. LIPMAN: I believe it is. Would you</p> <p>3 look on the bottom right?</p> <p>4 MR. DUGAN: Doctor, on the bottom right, it</p> <p>5 says "643"?</p> <p>6 THE WITNESS: Yes.</p> <p>7 MR. DUGAN: I have it. You don't need to</p> <p>8 dig it out.</p> <p>9 MR. NORWOOD: Thank you.</p> <p>10 BY MR. NORWOOD:</p> <p>11 Q. All right, so now, what is--is that a</p> <p>12 document you reviewed as part of the mix in this case?</p> <p>13 A. Yes. I did see this paper, yes.</p> <p>14 Q. All right, and--here's an extra copy if you</p> <p>15 all need that.</p> <p>16 Now, this is a report, and you referenced</p> <p>17 this report in your audit--in your expert report,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. All right, and this is a report, it appears,</p> <p>21 for Ronald Burt; date of the exam, 10/24/96. Is that</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And it talks about an examination of the</p> <p>25 C-spine, which is the cervical spine? Is that</p>                                                                                                                                                 |
| <p style="text-align: right;">Page 27</p> <p>1 it's scoliosis or not scoliosis? Is that something in</p> <p>2 the realm of, you know, possible medical disagreement?</p> <p>3 A. No, I don't think so. I don't think that--I</p> <p>4 think that people, you know, people with experience</p> <p>5 treating, you know, orthopedic surgeons, spine</p> <p>6 surgeons, neurosurgeons that are, that are--that are</p> <p>7 regularly--neuroradiologists that regularly treat</p> <p>8 these conditions, I don't think there's any--I don't</p> <p>9 think there's any disagreement.</p> <p>10 Q. Okay.</p> <p>11 A. I think that you can have--I think there are</p> <p>12 many types of spine conditions that--many different</p> <p>13 types that can cause a curvature of the spine.</p> <p>14 Q. Okay. Well, you--you understand in this</p> <p>15 case, there was a diagnosis of scoliosis; correct?</p> <p>16 A. As I recall reading the records, there was a</p> <p>17 note in, I believe it was nineteen ninety--</p> <p>18 Q. Well, let's dig out the note just to</p> <p>19 expedite things. Bear with me. I have the exhibits</p> <p>20 here, and I'm going to make it really easy for you,</p> <p>21 because in the interests of time, we want to make sure</p> <p>22 that we are efficient, and I'm going to hand you</p> <p>23 Petkovich Deposition Exhibit 11, and I should have</p> <p>24 extra copies somewhere for the folks.</p> <p>25 MR. DUGAN: Is that page 643?</p> | <p style="text-align: right;">Page 29</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And for us lay people, we're talking about,</p> <p>4 I guess, a certain portion of the spine that is below</p> <p>5 the neck; is that correct?</p> <p>6 A. Well, it is the neck, the cervical spine.</p> <p>7 Q. I'm sorry. I'm sorry, the neck down to the</p> <p>8 mid part of the back or thereabout?</p> <p>9 A. It's down--it's from the head, so the neck,</p> <p>10 cervical spine from the base of the head down to the</p> <p>11 top of the ribcage area, thoracic spine.</p> <p>12 Q. Okay. All right, and the thoracic spine</p> <p>13 then continues below--and that's the other lower</p> <p>14 portion of the spine--</p> <p>15 A. Yes.</p> <p>16 Q. --that goes through the lower back area?</p> <p>17 A. So you have the cervical spine which we</p> <p>18 mentioned, then the thoracic spine is the spine or the</p> <p>19 ribs, twelve ribs, so twelve thoracic vertebrae, and</p> <p>20 then you have the lower back, lumbar spine with the</p> <p>21 five lumbar vertebrae.</p> <p>22 Q. Okay. All right, and so this, though,</p> <p>23 relates to the neck area?</p> <p>24 A. Yes.</p> <p>25 Q. All right, and this was done by--I mean a</p> |



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| <p style="text-align: right;">Page 30</p> <p>1 radiologist, it appears; correct?</p> <p>2 A. Yes. I don't know who this person is. The</p> <p>3 report you are referring to is signed by a Michael</p> <p>4 Silberstein, and I don't know who that is.</p> <p>5 Q. But he's--he's identified as a radiologist,</p> <p>6 correct?</p> <p>7 A. Yes. Yes.</p> <p>8 Q. And what is a radiologist?</p> <p>9 A. A radiologist--radiology is the, is the</p> <p>10 specialty in medicine that deals with the reading of,</p> <p>11 interpretation of radiographic studies.</p> <p>12 Q. All right, are you a radiologist?</p> <p>13 A. I am not a radiologist.</p> <p>14 Q. Okay, and I take it from your--well, let's</p> <p>15 just take a look at it, all right? According to this</p> <p>16 report, it says--and I'll just read it into the</p> <p>17 record--it's a section that says, "Cervical Spine,"</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then it says, quote, "There is a mild</p> <p>21 convex torticollis centered at C3 and a lower</p> <p>22 cervical/upper thoracic scoliosis convex to the right,</p> <p>23 centered at C6-C7."</p> <p>24 Is that a fair reading?</p> <p>25 A. Yes.</p>                                                                                                  | <p style="text-align: right;">Page 32</p> <p>1 A. Now, as far as--so that's, that's what</p> <p>2 torticollis means, what I said as far as the</p> <p>3 curvature, et cetera, et cetera, and that's--but</p> <p>4 that's really not a radiographic finding. That's a</p> <p>5 condition, but it's really not a radiographic finding.</p> <p>6 Q. Well, but it's contained in this</p> <p>7 radiographic finding, correct?</p> <p>8 A. It is contained in this report, but that's</p> <p>9 not correct.</p> <p>10 Q. What's not correct?</p> <p>11 A. Torticollis, torticollis is a condition.</p> <p>12 Torticollis is not--torticollis is not a radiographic</p> <p>13 finding.</p> <p>14 Q. Okay. Well, the radiologist back in '96,</p> <p>15 for some reason, decided to reference that, based upon</p> <p>16 a review of some x-rays, I assume; is that correct?</p> <p>17 A. Yes. In this case, in this case, I remember</p> <p>18 from the records, this gentleman, Mr. Burt, apparently</p> <p>19 had an issue where he fell in the shower--</p> <p>20 Q. Right.</p> <p>21 A. --and said that he hurt his neck,--</p> <p>22 Q. Right.</p> <p>23 A. --and then he was seen at the medical</p> <p>24 department there at the prison, was having some neck</p> <p>25 pain. They got x-rays and, you know, I think that he</p>                                                 |
| <p style="text-align: right;">Page 31</p> <p>1 Q. It may not be a fair pronunciation, but is</p> <p>2 that a fair reading of what's said?</p> <p>3 A. Yes, sir. That, that--you've read the</p> <p>4 report.</p> <p>5 Q. And you disagree with that finding; correct?</p> <p>6 A. I would disagree with the impression where</p> <p>7 he uses the word "torticollis" and "scoliosis."</p> <p>8 Q. All right. Well, let's break that down,</p> <p>9 first. Okay, first of all, what is torticollis?</p> <p>10 A. Torticollis is a muscle contraction in the</p> <p>11 neck that typically occurs as a--with, with flexion,</p> <p>12 extension, rotation.</p> <p>13 Typically, it's seen in children.</p> <p>14 Sometimes, children, a lot of times young children,</p> <p>15 after a difficult delivery, will have some</p> <p>16 contractures, maybe from sitting in utero, the last</p> <p>17 parts of pregnan--the last parts of time of pregnancy,</p> <p>18 and sometimes in small children, you'll see a</p> <p>19 torticollis where the muscles are not fully developed</p> <p>20 and will be a little contracted from being in the</p> <p>21 womb.</p> <p>22 Q. Mm-hmm?</p> <p>23 A. And so that's, that's where you typically</p> <p>24 see it, and then it's treated in children.</p> <p>25 Q. Okay.</p> | <p style="text-align: right;">Page 33</p> <p>1 very possibly could have had--could have strained his</p> <p>2 neck, could have had some muscle spasm in those areas</p> <p>3 that could have caused him with some muscle spasms</p> <p>4 just like we all, you know, sometimes sleep on the</p> <p>5 wrong side or whatever, wake up with a little neck</p> <p>6 pain, a little muscle spasm where we're pulling to one</p> <p>7 side or the other,--</p> <p>8 Q. Right.</p> <p>9 A. --and that would, that would explain, even--</p> <p>10 he's talking about the word "scoliosis" here. I mean,</p> <p>11 he may have--</p> <p>12 Q. Well, hold on. Let's stay with torticollis.</p> <p>13 We're not talking about scoliosis.</p> <p>14 A. My point is, sir, my point is that if this</p> <p>15 man, this history, this incident in the shower, he</p> <p>16 could have had some muscle spasm that could have</p> <p>17 caused that--could have caused him to hold his head</p> <p>18 and neck to one side or the other.</p> <p>19 Q. He could have or he could have--something</p> <p>20 else could have caused it, right? We don't know as we</p> <p>21 sit here today; is that correct?</p> <p>22 A. Something else could have caused what?</p> <p>23 Q. Whatever they saw that indicated to them</p> <p>24 that this was torticollis.</p> <p>25 A. It's not torticollis.</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 Q. No, no, I'm saying what they said was<br/>2 torticollis. I don't know what it is. I defer to the<br/>3 specialists. I'm just talking about Dr. Michael<br/>4 Silberstein saw something to suggest that it was<br/>5 torticollis, and you are sort of surmising what may<br/>6 have caused whatever he saw that he thought was<br/>7 torticollis that you disagree with, but suffice it to<br/>8 say that he saw something that indicated to him it was<br/>9 torticollis. Is that a fair statement?<br/>10 A. I think, I think--<br/>11 Q. Is that--just answer my--is that a fair<br/>12 statement, he saw something?<br/>13 A. I can't--<br/>14 MR. BOOSE: Objection to speculation.<br/>15 A. (Continuing) I can't speak for him--<br/>16 BY MR. NORWOOD:<br/>17 Q. Okay.<br/>18 A. --because I don't know, I don't know who he<br/>19 is, I don't know what his--I don't know what his<br/>20 educational background or experience is, I don't know<br/>21 who--<br/>22 Q. Right.<br/>23 A. --I don't know who this man is.<br/>24 Q. Right. Right. I understand that, and I'm<br/>25 not asking you to speak for him, because in forming</p> | <p style="text-align: right;">Page 36</p> <p>1 accurate, right?<br/>2 A. Yes, you would--you would assume that, yes.<br/>3 Q. All right, but basically, you have basically<br/>4 indicated that the medical records are replete with<br/>5 misdiagnosis. Is that a fair statement?<br/>6 MR. DUGAN: Objection; argumentative.<br/>7 BY MR. NORWOOD:<br/>8 Q. Let me rephrase the question. As relates to<br/>9 this report, this is a misdiagnosis, correct? In your<br/>10 opinion?<br/>11 A. I would say that the way he's describing<br/>12 this to me, okay, I think he is describing this<br/>13 curvature, this man, this man holding his neck to the<br/>14 side the way he's describing it, to me would be<br/>15 consistent with what I said, you know, a muscle<br/>16 strain, et cetera, et cetera, so the way he's<br/>17 describing that, I really wouldn't disagree with<br/>18 that,--<br/>19 Q. Well--<br/>20 A. --but I would disagree with the impression,<br/>21 because I've stated that he's got--he's got an<br/>22 impression, no fractures, okay, which I agree with,<br/>23 he's got torticollis and scoliosis, and you can't make<br/>24 that--you can't make a diagnosis like that based upon<br/>25 looking at these x-rays.</p> |
| <p style="text-align: right;">Page 35</p> <p>1 your opinion, you are relying on medical records,<br/>2 right?<br/>3 A. I'm relying on medical records, number one.<br/>4 Q. Right.<br/>5 A. I'm relying on my review of the radiographic<br/>6 studies, number two.<br/>7 Q. Right, and this is one of those radiographic<br/>8 studies.<br/>9 A. And I'm also reviewing based on my<br/>10 experience.<br/>11 Q. Okay.<br/>12 A. I've been in practice 37 years, and I am a<br/>13 founding member of the North American Spine Society,<br/>14 international organization. I know a lot about spine<br/>15 issues.<br/>16 Q. And I understand all of that, and I'm not<br/>17 disputing all of that, right? What I'm suggesting is,<br/>18 and for the record, is that in formulating your<br/>19 opinion, in addition to your 37 years of experience<br/>20 and all of your degrees and such, you are also relying<br/>21 on medical records that have been provided to you by<br/>22 counsel; correct?<br/>23 A. Yes, sir, I am.<br/>24 Q. All right, and those medical records, you<br/>25 know, the assumption is that the medical records are</p>                                             | <p style="text-align: right;">Page 37</p> <p>1 Q. Well, but you are disagreeing with him, and<br/>2 you have disagreed with him in your report; correct?<br/>3 A. I've disagreed--what I'm stating is that<br/>4 there is--what I'm stating is that this man, there,<br/>5 does not have scoliosis,--<br/>6 Q. Right.<br/>7 A. --number one. Number two, he may have had<br/>8 some torticollis, he, he may have had some--been<br/>9 holding his neck to the side when he was initially<br/>10 seen because of a muscle spasm, but that, that's a<br/>11 clinical finding. I really wouldn't put that under<br/>12 the--<br/>13 Q. But you are speculating because you were not<br/>14 there and you did not examine this individual in '96.<br/>15 Can we agree with that?<br/>16 A. Yes, sir, that's true. We can agree.<br/>17 Q. All right, so that's speculation on your<br/>18 part. Is that right?<br/>19 A. It's more than speculation, but I did not<br/>20 examine him in 1996, and--period.<br/>21 Q. Okay.<br/>22 A. But I reviewed the records, all of the<br/>23 records at that time and since that time.<br/>24 Q. Right. Okay, and did those records include<br/>25 the 1996 x-ray?</p>                                                    |

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| <p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. Okay. You reviewed the 1996 x-ray?</p> <p>3 (Witness peruses documents.)</p> <p>4 A. I'm not--I'm looking at my medical records.</p> <p>5 I don't--I'm not certain that I reviewed that actual</p> <p>6 x-ray.</p> <p>7 Q. Okay.</p> <p>8 A. I reviewed subsequent x-rays.</p> <p>9 Q. Right.</p> <p>10 A. Numerous x-rays, but if you'll wait a</p> <p>11 minute, I'll see here.</p> <p>12 Q. Okay.</p> <p>13 (Witness continues to peruse documents.)</p> <p>14 A. I--no, I do not believe that I actually saw</p> <p>15 that actual x-ray from 1996.</p> <p>16 Q. All right, so that would put you at a little</p> <p>17 bit of a disadvantage as relates to Dr. Silberstein,</p> <p>18 who is a radiologist who actually reviewed those</p> <p>19 x-rays. Would you agree with that?</p> <p>20 MR. DUGAN: Object to form.</p> <p>21 MR. BOOSE: I join.</p> <p>22 A. No, no, I wouldn't, because I subsequently</p> <p>23 reviewed--you are talking about these diagnoses of</p> <p>24 scoliosis and torticollis, I believe.</p> <p>25 BY MR. NORWOOD:</p>                                                                                                                             | <p style="text-align: right;">Page 40</p> <p>1 spine, and then below that, you have T1, which is the</p> <p>2 top of the thoracic spine.</p> <p>3 Q. So he, in his opinion, saw what indicated to</p> <p>4 him as a radiologist who is identified as an M.D.,</p> <p>5 who--treating patients at the Illinois Department of</p> <p>6 Corrections, he disagrees with your assessment;</p> <p>7 correct?</p> <p>8 MR. DUGAN: Form, foundation, argumentative.</p> <p>9 A. Well, his report,--</p> <p>10 MR. BOOSE: I'm sorry--(Inaudible)</p> <p>11 A. --his report speaks for itself.</p> <p>12 THE COURT REPORTER: Did you--hang on one</p> <p>13 sec.</p> <p>14 Was your objection you joined, Mr. Bruce?</p> <p>15 MR. BOOSE: That's correct.</p> <p>16 THE COURT REPORTER: Okay. I didn't hear</p> <p>17 the word "join." That's the reason I asked.</p> <p>18 MR. BOOSE: Yes, my statement was "Join,"</p> <p>19 and too, I'm sorry, I'm not hearing you very well on</p> <p>20 some of these. I worry I might be not hearing some of</p> <p>21 the objections.</p> <p>22 MR. DUGAN: I don't think you've missed any.</p> <p>23 MR. BOOSE: Okay. Thank you.</p> <p>24 MR. NORWOOD: Nothing exciting, anyway.</p> <p>25 BY MR. NORWOOD:</p>                                                                                                                                                                                                                                           |
| <p style="text-align: right;">Page 39</p> <p>1 Q. Right.</p> <p>2 A. And I subsequently reviewed additional</p> <p>3 x-rays of the cervical spine for sure taken in</p> <p>4 December 2012, and I don't show any evidence of--of</p> <p>5 scoliosis, so--</p> <p>6 Q. In your opinion.</p> <p>7 A. Well, I mean obviously, it's my opinion.</p> <p>8 I'm stating it.</p> <p>9 Q. Okay.</p> <p>10 A. But in my opinion, or in the opinion of</p> <p>11 anybody else, in the opinion of any of the other</p> <p>12 treating physicians or the radiologists.</p> <p>13 Q. But Dr. Silberstein, in his opinion, he</p> <p>14 didn't simply state scoliosis, he stated specifically,</p> <p>15 quote, "a lower cervical/upper thoracic scoliosis,</p> <p>16 convex, to the right, centered at C6 and C7." That's</p> <p>17 fairly specific, isn't it?</p> <p>18 MR. DUGAN: Object to form.</p> <p>19 A. That's--that's what his report is stating.</p> <p>20 BY MR. NORWOOD:</p> <p>21 Q. Right, and so in his opinion, he saw some</p> <p>22 level of curvature that he described as convex to the</p> <p>23 right, centered at C6 and C7, and just so for us lay</p> <p>24 people, what is C6 and C7?</p> <p>25 A. C6-C7 are the lower ends of the cervical</p> | <p style="text-align: right;">Page 41</p> <p>1 Q. Now, let's go back. Let me rephrase the</p> <p>2 question, right? And I, as a lay person, as a lawyer,</p> <p>3 you know, we're looking at medical records, and we're</p> <p>4 listening to your testimony, and looking at your</p> <p>5 report, and so as a lay person myself, I'm trying to</p> <p>6 reconcile what you've put in your opinion about the</p> <p>7 fact that there absolutely, unequivocally, is no</p> <p>8 scoliosis, and I'm trying to reconcile that with</p> <p>9 Petkovich Deposition Exhibit 11, where Dr. Silberstein</p> <p>10 says specifically that there is certain scoliosis</p> <p>11 based on this convex to the right centered at C6 and</p> <p>12 C7, so are you saying that Dr. Silberstein is wrong in</p> <p>13 his report regarding scoliosis?</p> <p>14 A. Yes.</p> <p>15 Q. Okay, so you disagree with Dr. Silberstein.</p> <p>16 A. Yes.</p> <p>17 Q. All right, and then it goes further--well,</p> <p>18 when he talks about convex to the right, centered at</p> <p>19 C6 and C7, I understand you don't agree with that, but</p> <p>20 what is he describing as relates to this notion of</p> <p>21 thoracic scoliosis convex to the right centered at C6</p> <p>22 and C7? What is he describing?</p> <p>23 A. Convex, when you are describing a true</p> <p>24 curve, convex as opposed to concave, so convex means</p> <p>25 to one side, and then concave would be the other side</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 of that, so if you take a--if you take a piece of<br/>2 rope,--<br/>3 Q. Right.<br/>4 A. --if you the hang a piece of rope and push<br/>5 it to one side, it's going to be convex to that side<br/>6 and concave to the other side.<br/>7 Q. Okay.<br/>8 A. Right.<br/>9 Q. So here, he's describing a convex to the<br/>10 right, near C6 and C7? Is that what he's--<br/>11 A. Yes.<br/>12 Q. --purporting to describe?<br/>13 A. That's what his report says.<br/>14 Q. Right. That's what he report said. Okay.<br/>15 All right.<br/>16 Are you familiar with the term, "medically<br/>17 necessary treatment"?<br/>18 A. Yes.<br/>19 Q. And what does medically necessary treatment<br/>20 mean?<br/>21 A. A very, very broad term, means that<br/>22 something is being done based--based upon being<br/>23 appropriate medical care, necessary, I'm using--it's a<br/>24 hard word, hard to define, but it means, medically<br/>25 necessary means it's something that is necessary for</p>                                                                                                                                                                        | <p style="text-align: right;">Page 44</p> <p>1 MR. DUGAN: Object to form.<br/>2 MR. BOOSE: Join.<br/>3 A. I don't understand that question.<br/>4 BY MR. NORWOOD:<br/>5 Q. In your practice, 37 years, have you ever<br/>6 seen anything in any literature or any textbooks that<br/>7 talk about treating a patient only if it is absolutely<br/>8 necessary for a particular condition?<br/>9 MR. DUGAN: Same objections.<br/>10 A. Typically, I mean typically, physicians are<br/>11 not going to treat someone unless it is medically<br/>12 necessary.<br/>13 BY MR. NORWOOD:<br/>14 Q. Well, I agree with you there. I think we're<br/>15 in agreement. I'm talking about absolutely necessary.<br/>16 Are you familiar with the term, "absolute necessity,"<br/>17 as relates to providing medical care to patients?<br/>18 A. Well, I guess I'm--I guess I'm not familiar<br/>19 with what you are asking me. I'm familiar with the<br/>20 question, "medical necessity"--<br/>21 Q. Right.<br/>22 A. --and "absolute necessity," but I think that<br/>23 as I've already stated, I think, is that medical<br/>24 necessity is why someone seeks medical care.<br/>25 Q. Right, and so to shut this down, then, you</p>                                                                                                     |
| <p style="text-align: right;">Page 43</p> <p>1 medical reasons.<br/>2 Q. Okay, and is that the same thing as medical<br/>3 necessity? When we talk about medical necessity, is<br/>4 that the same thing?<br/>5 A. I've guess I would say that.<br/>6 Q. All right. All right, are you familiar with<br/>7 the term--well, let me ask you this way: Do you know<br/>8 if, during the 2009 through 2014 time frame, whether<br/>9 Wexford had a policy that was either written or<br/>10 unwritten that provided that a physician would refer<br/>11 an inmate to a specialist only if it was absolutely<br/>12 necessary?<br/>13 A. Well, I'm not familiar with any of their<br/>14 policies.<br/>15 Q. All right. All right, so the answer to your<br/>16 question is no, you don't know if they had such a<br/>17 policy--<br/>18 A. No.<br/>19 Q. --that required absolute necessity as<br/>20 related to referring patients, inmate patients to a<br/>21 specialist. Is that correct?<br/>22 A. Yeah, I'm not familiar with their policies.<br/>23 Q. All right. Are you aware of any absolute<br/>24 necessity standard that's used in the medical<br/>25 profession as relates to the treatment of any patient?</p> | <p style="text-align: right;">Page 45</p> <p>1 are not familiar with the term "absolute necessity" as<br/>2 relates to medical practice. Is that right?<br/>3 A. I've not--I'm, I'm not familiar with that<br/>4 term exactly.<br/>5 Q. All right, and to the extent that if some<br/>6 physician was utilizing an absolute necessity standard<br/>7 for deciding whether or not a patient should be<br/>8 treated or referred to a specialist, would you take<br/>9 issue with that?<br/>10 MR. DUGAN: Object to form.<br/>11 MR. BOOSE: Join.<br/>12 A. I've never heard that before. I think that<br/>13 it's--I think that--I think when somebody should--when<br/>14 someone is referred to a specialist, there should be a<br/>15 reason to refer to a specialist. There should be a<br/>16 medical reason to refer to a specialist. As I stated<br/>17 earlier, when someone is seen by a primary care<br/>18 provider, and I think of all the things I've<br/>19 previously said, if they have persistent symptoms,<br/>20 physical examination findings, objective findings, et<br/>21 cetera, et cetera, if they have all that, then they<br/>22 should be referred to a specialist.<br/>23 BY MR. NORWOOD:<br/>24 Q. All right, do you know if an absolute<br/>25 necessity standard was applied to any of Mr. Burt's</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 treatment at Menard, based on the records you've<br/>2 reviewed?<br/>3 A. Based on the records that I've reviewed,<br/>4 Mr. Burt saw a number of different providers at<br/>5 Menard. I think that he was treated appropriately by<br/>6 them--<br/>7 Q. I understand that, sir, but let me just ask<br/>8 you--<br/>9 A. Okay.<br/>10 Q. I'm focusing on absolute necessity. Let's<br/>11 stay with me here.<br/>12 A. Okay.<br/>13 Q. Do you know if, in that treatment, based on<br/>14 those medical records you reviewed, those physicians<br/>15 at Menard applied an absolute necessity standard with<br/>16 respect to that treatment? That's the question.<br/>17 A. No, I, I--no, I don't know that. I'm not<br/>18 familiar with that term, as I stated.<br/>19 Q. So if they did, you don't know about it, and<br/>20 it wouldn't change your opinion one way or the other?<br/>21 A. Yes, sir, you are--you are correct.<br/>22 Q. Okay.<br/>23 A. Yes.<br/>24 Q. So it wouldn't change your opinion if they<br/>25 were applying an absolute necessity standard as they</p>                                                                                                      | <p style="text-align: right;">Page 48</p> <p>1 plan of attack, how you are going to do something. If<br/>2 you have a simple problem, then there's no need to<br/>3 have a treatment plan because it's very simple.<br/>4 Q. Now, what--are you familiar with what<br/>5 typically should be done if a portion of a medical<br/>6 record is missing?<br/>7 MR. DUGAN: Object to form; improper,<br/>8 incomplete hypothetical.<br/>9 MR. BOOSE: Join.<br/>10 A. Well, what type, what kind of--<br/>11 BY MR. NORWOOD:<br/>12 Q. Any kind of portion of a medical record, is<br/>13 there any kind of protocol you should follow if, for<br/>14 some reason, a portion of a medical record turns up<br/>15 missing?<br/>16 MR. DUGAN: Same objection.<br/>17 A. Okay, very, very broad question, but I would<br/>18 try to--I would try to look at the records before that<br/>19 period of time, look at the records after that period<br/>20 of time, and try to put everything together.<br/>21 BY MR. NORWOOD:<br/>22 Q. Okay, and you are aware in this case, there<br/>23 are certain missing medical records? Is that correct?<br/>24 MR. DUGAN: Object to form.<br/>25 MR. BOOSE: Join.</p> |
| <p style="text-align: right;">Page 47</p> <p>1 were documenting his treatment. Is that correct?<br/>2 MR. DUGAN: Object to form.<br/>3 MR. BOOSE: Join.<br/>4 A. Again, I'm not--again, I'm not familiar with<br/>5 that term, I'm not familiar with their policies.<br/>6 BY MR. NORWOOD:<br/>7 Q. Okay.<br/>8 A. I don't know what else I can say.<br/>9 Q. I got you. What is a treatment plan?<br/>10 A. A treatment plan is a, you know, plan how<br/>11 you are going to treat an individual, a patient.<br/>12 Q. And is that generally memorialized somewhere<br/>13 in medical records that you maintain?<br/>14 A. Sometimes. It depends on--it depends upon<br/>15 the complexity of an issue. If something is a simple<br/>16 issue, you don't--there's really no--you don't really<br/>17 elaborate, but it depends on what you are dealing<br/>18 with.<br/>19 Q. Okay, so in certain cases, you might have a<br/>20 written treatment plan that would be documented in<br/>21 your records, and other times, it wouldn't; is that<br/>22 correct?<br/>23 A. If you had--if you had a complex issue, a<br/>24 complex issue, all the things I discussed, then you<br/>25 might have a--you would have a treatment plan, your</p> | <p style="text-align: right;">Page 49</p> <p>1 A. I'm not--I'm not sure that there are missing<br/>2 medical records, no.<br/>3 BY MR. NORWOOD:<br/>4 Q. All right. Well, in your report, you<br/>5 referred to the fact that there was an x-ray that was<br/>6 reviewed by Dr. Nwaobasi that apparently is missing,<br/>7 right?<br/>8 A. Yes, and I'm not--I'm not certain whether<br/>9 that's--whether that's really missing or whether that<br/>10 was a mistake in stating that, that date, so I'm, I'm<br/>11 not real--I'm not certain if medical records are<br/>12 really missing.<br/>13 Q. Okay. All right, but you haven't seen it?<br/>14 A. I have not seen it.<br/>15 Q. All right, and neither have we, for the<br/>16 record.<br/>17 Now, in your report, you talk about physical<br/>18 therapy options, and in your opinion, you indicated<br/>19 that physical therapy essentially would be a waste; is<br/>20 that correct?<br/>21 A. Well, it's a synopsis. I think physical<br/>22 therapy for Mr. Burt was unnecessary.<br/>23 Q. Well, so it would be a waste, right?<br/>24 MR. DUGAN: Object to form.<br/>25 A. Yeah, I don't like to use--</p>                         |



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| <p style="text-align: right;">Page 50</p> <p>1 MR. BOOSE: Join.</p> <p>2 A. (Continuing) I don't like to use the word</p> <p>3 "waste," but I think physical therapy for Mr. Burt was</p> <p>4 unnecessary.</p> <p>5 BY MR. NORWOOD:</p> <p>6 Q. All right, but you suggested that perhaps</p> <p>7 some exercises that were prescribed to him by</p> <p>8 Dr. Trost would be sufficient, correct?</p> <p>9 A. I think the exercises would be sufficient,</p> <p>10 certainly, but if I saw, if I saw this gentleman in my</p> <p>11 office, if I saw Mr. Burt in my office with his</p> <p>12 physical findings and his radiographic findings as</p> <p>13 we've discussed, I would have treated him like he was,</p> <p>14 with a low-dose antiinflammatory medication. I</p> <p>15 probably would not even have told him to do any</p> <p>16 exercises.</p> <p>17 Q. Okay.</p> <p>18 A. But I think, I think that's okay to do the</p> <p>19 exercises, but I don't know that it was really</p> <p>20 necessary. I think maybe the doctor, here, maybe told</p> <p>21 him about doing exercises to, you know, pacif--make</p> <p>22 him--make him happy, whatever, but I don't really</p> <p>23 think exercises were necessary.</p> <p>24 Q. Okay, so--so you believe, in your opinion,</p> <p>25 that to pacify him, they said do some exercise. Is</p>            | <p style="text-align: right;">Page 52</p> <p>1 that correct?</p> <p>2 MR. DUGAN: Object to form.</p> <p>3 A. Well, I would have treated him like I said.</p> <p>4 The last thing I do is send a bill. I'm not sure what</p> <p>5 you mean.</p> <p>6 BY MR. NORWOOD:</p> <p>7 Q. Well, okay. All right, you wouldn't bill</p> <p>8 him. All right. I got you.</p> <p>9 A. But it's a very simple thing.</p> <p>10 Q. Well, it's simple, right.</p> <p>11 A. It's a simple problem, and I think that, you</p> <p>12 know, I mean people I see people like this all the</p> <p>13 time.</p> <p>14 Q. I got you.</p> <p>15 A. If I walk up and down the street and x-rayed</p> <p>16 every, you know, 50-year-old man walking up and down</p> <p>17 the street, they're all going to have an element of</p> <p>18 some mild degenerative disc changes in their cervical</p> <p>19 spine, their lumbar spine.</p> <p>20 Q. Okay, great.</p> <p>21 A. Much younger than 50. We started getting--</p> <p>22 Q. Right.</p> <p>23 A. We start getting mild degenerative changes</p> <p>24 in our twenties.</p> <p>25 Q. I got you, and just so the record's clear,</p>                                                                                                                                                          |
| <p style="text-align: right;">Page 51</p> <p>1 that your testimony?</p> <p>2 A. Perhaps, yes.</p> <p>3 Q. Okay. All right, is that they pacify him by</p> <p>4 also giving him prescription medicine to deal with</p> <p>5 this issue?</p> <p>6 A. Well, I--if I saw him, if, if I saw Mr. Burt</p> <p>7 as a patient,--</p> <p>8 Q. Right.</p> <p>9 A. --I would--and I examined him he had a</p> <p>10 normal physical examination, his only, his only</p> <p>11 positive physical findings--we're talking about</p> <p>12 cervical spine--was this minimally degenerative</p> <p>13 cervical disc condition, disease at C4-5, some</p> <p>14 degenerative disc conditions at the L5-S1 level, if I</p> <p>15 saw somebody like that, I would tell them, you know,</p> <p>16 this is really a mild condition, you don't really need</p> <p>17 to do anything about it. If it bothers you, if it</p> <p>18 bothers you, you might take a low-dose, over-the-</p> <p>19 counter, anti-inflammatory medication like ibuprofen</p> <p>20 or one of those, but you know, I wouldn't do anything</p> <p>21 else about it.</p> <p>22 Q. All right, so basically, "Go to the</p> <p>23 drugstore, pick up some ibuprofen, and here's your</p> <p>24 bill." Is that essentially how you would have treated</p> <p>25 Dr.--I mean Mr. Burt as relates to his condition? Is</p> | <p style="text-align: right;">Page 53</p> <p>1 then you would just simply say "Get an over-the-</p> <p>2 counter medicine and you'll be okay"? I mean, I'm</p> <p>3 trying to understand what your suggestion is.</p> <p>4 A. Yes, sir, that's--that is what I'm saying.</p> <p>5 Q. All right.</p> <p>6 A. I think that that--</p> <p>7 Q. All right.</p> <p>8 A. I think just a low dose over-the-counter</p> <p>9 should be sufficient.</p> <p>10 Q. So to the extent that they gave him</p> <p>11 something other than a low-dose medication, you would</p> <p>12 disagree with that particular form of treatment,</p> <p>13 right?</p> <p>14 A. I wouldn't--I wouldn't disagree with it. I</p> <p>15 think that they--I think that they probably--I think</p> <p>16 they probably really, in a way, overtreated him, gave</p> <p>17 him more than he really needed to pacify him.</p> <p>18 Q. Okay, and that's your professional opinion?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. All right, and is it ethical to</p> <p>21 overmedicate someone to pacify them if, somehow, that</p> <p>22 treatment is not medically necessary?</p> <p>23 A. No, it's not unethical in a situation like</p> <p>24 this, that he was given--he was given, still, low</p> <p>25 doses of an antiinflammatory medication. That's</p> |



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| <p style="text-align: right;">Page 54</p> <p>1 certainly not unethical.</p> <p>2 Q. Okay, so--so my question is, though, is it</p> <p>3 unethical to overtreat a patient who only needs an</p> <p>4 over-the-counter pain pill?</p> <p>5 MR. DUGAN: Object to form; asked and</p> <p>6 answered.</p> <p>7 MR. BOOSE: Join.</p> <p>8 A. Yeah, I don't--I wouldn't use the word</p> <p>9 "overtreatment."</p> <p>10 Q. Well, you used the word "overtreatment."</p> <p>11 That's why I'm using it. You said he was overtreated.</p> <p>12 Am I mischaracterizing your testimony?</p> <p>13 A. Well, I don't know if I said that</p> <p>14 specifically, but--</p> <p>15 MR. NORWOOD: Well, hold on. Let's stop.</p> <p>16 Can we go back and read his answer where he</p> <p>17 talked about overtreatment, just so we put it all in</p> <p>18 context, and clarify it, if need be?</p> <p>19 THE COURT REPORTER: (Reading back)</p> <p>20 "Q: I wouldn't--I wouldn't disagree</p> <p>21 with it. I think that they--I think they probably</p> <p>22 really, in a way, overtreated him, gave him more than</p> <p>23 he really needed to pacify him."</p> <p>24 BY MR. NORWOOD:</p> <p>25 Q. Okay, so you used the word "overtreatment"--</p>                                                                                                                                         | <p style="text-align: right;">Page 56</p> <p>1 dosage, over-the-counter versus a prescription, right?</p> <p>2 A. Well, we're talking about the medications</p> <p>3 here, we're talking about ibuprofen, we're talking</p> <p>4 about meloxicam, I think, in this case--</p> <p>5 Q. Right.</p> <p>6 A. --that we were talking about, and so I mean</p> <p>7 they're all--</p> <p>8 Q. Mobic?</p> <p>9 A. Yeah, they're all the same. They're all</p> <p>10 nonsteroidal antiinflammatory medications, so the only</p> <p>11 difference between the over-the-counter and the</p> <p>12 prescription is the dose, and so--</p> <p>13 Q. So you would have done the over-the-counter</p> <p>14 because in your professional opinion, that's all he</p> <p>15 needed.</p> <p>16 A. I think I would have started him off with an</p> <p>17 over-the-counter, and it's the same thing I do in my</p> <p>18 practice, I would start somebody off with a low-dose</p> <p>19 over-the-counter, I'd give him some samples. If they</p> <p>20 came back and said they're still having pain, okay, I</p> <p>21 would give them a little more.</p> <p>22 Q. Okay.</p> <p>23 A. And I would, in my practice, I would write a</p> <p>24 stronger prescription based upon their subjective</p> <p>25 complaints--</p> |
| <p style="text-align: right;">Page 55</p> <p>1 A. You are right.</p> <p>2 Q. --and I'm trying to figure out what you</p> <p>3 meant when you said he was he was overtreated.</p> <p>4 A. What I meant was that I think they--my</p> <p>5 review of the records that they--he was seen on</p> <p>6 multiple occasions at that medical facility, and he,</p> <p>7 you know, had subjective complaints and multiple</p> <p>8 subjective complaints as we've discussed, and so they</p> <p>9 gave him, you know, the appropriate medication, et</p> <p>10 cetera, et cetera, so I think that probably was it</p> <p>11 really necessary for him to continue to take all that?</p> <p>12 You know, debatable, but in my own practice, I have</p> <p>13 patients in my practice that I think can get by with</p> <p>14 mild stuff and that insist upon taking a stronger</p> <p>15 level of an antiinflammatory medication, and you know,</p> <p>16 to keep them happy, I do that. It's not going to hurt</p> <p>17 them, so anything, anything that he's taking, these</p> <p>18 are all mild medications.</p> <p>19 Q. Okay. All right.</p> <p>20 A. So none of those, none of those are really</p> <p>21 hurting him.</p> <p>22 Q. All right.</p> <p>23 A. But does he really need that strong of a</p> <p>24 dose? Debatable.</p> <p>25 Q. Okay, so we've got a debate about what</p> | <p style="text-align: right;">Page 57</p> <p>1 Q. All right.</p> <p>2 A. --because these are mild, these are mild</p> <p>3 medications,--</p> <p>4 Q. All right.</p> <p>5 A. --and that's it.</p> <p>6 Q. All right, so now let's talk about that</p> <p>7 hypothetical patient you just identified. You first</p> <p>8 prescribe him with a low dose, he's still having pain,</p> <p>9 you increase the dose; right?</p> <p>10 A. Yes.</p> <p>11 Q. And then he's still having pain, so what do</p> <p>12 you do then?</p> <p>13 A. I would tell them--</p> <p>14 MR. BOOSE: Objection to form.</p> <p>15 A. --if someone had persistent subjective</p> <p>16 complaints, I would tell them that based upon all of</p> <p>17 the things I've discussed already, the radiographic</p> <p>18 studies, his physical examination findings, et cetera,</p> <p>19 et cetera, he had--all he had were the mild</p> <p>20 degenerative changes in his cervical and lumbar spine</p> <p>21 and that there was nothing more to do.</p> <p>22 Q. All right. Now, you are basing this</p> <p>23 assessment that there's nothing more to do based upon</p> <p>24 the x-ray, right?</p> <p>25 A. No, I'm basing it upon everything, basing it</p>                                                                    |

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| <p style="text-align: right;">Page 58</p> <p>1 upon his--</p> <p>2 Q. Wait a minute. Let me rephrase it. One of</p> <p>3 the things you rely upon is an x-ray; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you and I can agree that an x-ray</p> <p>6 doesn't pick up everything; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. All right, and there's more sophisticated</p> <p>9 radiological tests that you can do to pick up things</p> <p>10 that an x-ray wouldn't pick up; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. All right, and so an x-ray, as I understand</p> <p>13 an x-ray--and again, I'm a lay person--it picks up</p> <p>14 bones and what else?</p> <p>15 A. Plain x-rays pick up bony structure,</p> <p>16 calcified structure, but they also, they not only show</p> <p>17 the bone but they show the relation of bones to</p> <p>18 another so they show stability, instability, et</p> <p>19 cetera, et cetera.</p> <p>20 Q. Okay.</p> <p>21 A. They can show--they can show on x-rays, they</p> <p>22 can show if there's any erosion, so we start thinking</p> <p>23 about is there a tumor, an infection going on, so they</p> <p>24 show bones, but they--</p> <p>25 Q. Right.</p>   | <p style="text-align: right;">Page 60</p> <p>1 Q. Right.</p> <p>2 A. --that was not picked up on x-ray, yes.</p> <p>3 Q. All right. All right, what are the</p> <p>4 limitations of an x-ray--</p> <p>5 MR. DUGAN: Object to form.</p> <p>6 BY MR. NORWOOD:</p> <p>7 Q. --in terms of what it could show?</p> <p>8 MR. BOOSE: Join.</p> <p>9 A. Well, when an x-ray doesn't show, it doesn't</p> <p>10 show soft tissues, okay? It doesn't show soft</p> <p>11 tissues, and--</p> <p>12 BY MR. NORWOOD:</p> <p>13 Q. Well, as it relates to the spine, what are</p> <p>14 we talking about, then?</p> <p>15 A. So it doesn't show--in the spine, it doesn't</p> <p>16 show the muscles, okay? It doesn't show the--it</p> <p>17 doesn't show the soft tissues, i.e., the disc, the</p> <p>18 components of the disc, it doesn't show the neurologic</p> <p>19 structures, themselves, so it doesn't--it doesn't show</p> <p>20 what are called the soft-tissue structures of the</p> <p>21 spine.</p> <p>22 Q. All right, so that if, hypothetically,</p> <p>23 Mr. Burt had an issue that involved soft tissue, it is</p> <p>24 possible that that might not be reflected on an x-ray,</p> <p>25 correct?</p>                                                                                                                                                            |
| <p style="text-align: right;">Page 59</p> <p>1 A. --show, they show a lot.</p> <p>2 Q. Well, they should show structural changes in</p> <p>3 the bone; correct?</p> <p>4 A. Yes.</p> <p>5 Q. All right. What about soft tissue?</p> <p>6 A. They--they do not show the soft tissue, per</p> <p>7 se.</p> <p>8 Q. Okay. What about bone spurs?</p> <p>9 A. They do show bone spurs.</p> <p>10 Q. Would it show bone spurs in all cases? I</p> <p>11 mean, regardless of where that bone spur may be in the</p> <p>12 spine?</p> <p>13 A. They show bone spurs very well. You are</p> <p>14 saying do they show bone spurs in all cases. I'm not</p> <p>15 going to use the word "all cases" because there's</p> <p>16 exceptions to everything.--</p> <p>17 Q. All right.</p> <p>18 A. --but to answer your question, yes, x-rays,</p> <p>19 x-rays do, by and large, show bone spurs.</p> <p>20 Q. Okay, and there are occasions where an x-ray</p> <p>21 might not pick up a bone spur is what you are saying</p> <p>22 or suggesting, correct?</p> <p>23 A. What I'm saying is obviously, it is--</p> <p>24 obviously, it is possible to have a very mild bone</p> <p>25 spur--and this is very hypothetical--</p> | <p style="text-align: right;">Page 61</p> <p>1 MR. BOOSE: Objection to form and incomplete</p> <p>2 hypothetical.</p> <p>3 MR. DUGAN: Join.</p> <p>4 A. You are correct in that it is possible to</p> <p>5 have a soft tissue condition that is not picked up on</p> <p>6 the x-rays, yes.</p> <p>7 BY MR. NORWOOD:</p> <p>8 Q. Okay, and the pickup of soft tissue</p> <p>9 condition, what other types of evaluative tests would</p> <p>10 you, in your professional opinion, consider to utilize</p> <p>11 if you suspected that that could be an issue?</p> <p>12 A. Now we're talking about the spine again.</p> <p>13 Q. Right.</p> <p>14 A. So just talking about the spine, if someone</p> <p>15 had someone's history and physical examination,</p> <p>16 putting all that together suggested there was</p> <p>17 something going on other than, other than--other than</p> <p>18 seen on the x-rays, then I would get an MRI.</p> <p>19 Q. All right, and why would you get an MRI?</p> <p>20 A. Because an MRI does--"MRI" stands for</p> <p>21 magnetic resonance image--imaging. It works--it's not</p> <p>22 really an x-ray. It works off of a magnet principle,</p> <p>23 so the MRI shows the soft tissues, what we talk about</p> <p>24 the muscles, the discs, themselves, the discs or the</p> <p>25 cushions between the vertebrae, it shows the</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 neurologic structures, et cetera.</p> <p>2 Q. All right. What is a CT scan?</p> <p>3 A. "CT" scan stands for computer tomography, so</p> <p>4 tomography means layers, so what a CT does, it shows</p> <p>5 the--it shows the--it shows the hard structures, the</p> <p>6 bone, in more detail. Taking it apart, it'll--like</p> <p>7 three-dimensionally, it'll show levels going from a</p> <p>8 top-to-bottom, so a horizontal from top to bottom</p> <p>9 slices, and then from side to side and from front to</p> <p>10 back, so--so anyway, so a CT, a CT also shows the hard</p> <p>11 structures, the bone, and they--but they show that in</p> <p>12 more detail than plain x-rays.</p> <p>13 Q. What about soft tissue?</p> <p>14 A. They show--they don't show--they show the</p> <p>15 soft tissue to a degree, but not as much as an MRI.</p> <p>16 Q. Okay, so with respect to soft tissue items,</p> <p>17 issues, you would rely more heavily on an MRI than</p> <p>18 you would a CT scan. Is that a fair assessment?</p> <p>19 A. If I suspected a soft tissue issue, yes, I</p> <p>20 would rely more on an MRI.</p> <p>21 Q. Okay. Outside of the medical records, have</p> <p>22 you reviewed anything else associated with this case?</p> <p>23 A. Medical records including radiographic</p> <p>24 studies, no.</p> <p>25 Q. Okay, and so you haven't reviewed any</p> | <p style="text-align: right;">Page 64</p> <p>1 How many pages of records did you review, by the way?</p> <p>2 Do you recall?</p> <p>3 A. I have a lot of records on CD. I have a CD</p> <p>4 with, I think, over a thousand records.</p> <p>5 Q. Okay.</p> <p>6 A. Then I have broken down to--with a synopsis</p> <p>7 of some of the more significant records, so I would</p> <p>8 say a total of over a thousand pages.</p> <p>9 Q. All right. All right, and so based upon</p> <p>10 your review of those thousand pages, can we agree that</p> <p>11 there have been repeated complaints made by Dr. (sic)</p> <p>12 Burt--I mean Mr. Burt about back and neck pain?</p> <p>13 A. Yes.</p> <p>14 Q. All right, and in his assessment, his</p> <p>15 subjective assessment, he's described it as being</p> <p>16 severe pain in some measure; is that correct?</p> <p>17 A. As I recall, in some cases, he referred,</p> <p>18 Mr. Burt referred to himself as having severe pain.</p> <p>19 Q. All right, and so you--well, let me ask you</p> <p>20 this: Do you believe that Mr. Burt is exaggerating</p> <p>21 his pain?</p> <p>22 A. It's my opinion that his multiple subjective</p> <p>23 complaints are not consistent with his objective</p> <p>24 physical findings, not consistent with his</p> <p>25 radiographic studies. I do not believe there's any</p> |
| <p style="text-align: right;">Page 63</p> <p>1 deposition testimony or anything like that?</p> <p>2 A. No.</p> <p>3 Q. Okay, and outside of Mr. Khatskin, have you</p> <p>4 talked to anyone else about this case?</p> <p>5 A. Just this morning, talked with Mr. Dugan.</p> <p>6 Q. Okay, and how long did you talk to</p> <p>7 Mr. Dugan?</p> <p>8 A. For about half an hour.</p> <p>9 Q. And what did you and Mr. Dugan discuss?</p> <p>10 A. Just basically discussed my review of the</p> <p>11 records, my reports, my opinions.</p> <p>12 Q. Okay. All right. Now, we can agree that</p> <p>13 Mr. Ronald Burt has been complaining for a very long</p> <p>14 time about problems with his neck and back. Is that</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. All right, and it goes back to what?</p> <p>18 Shortly after that incident, and that's reflected in</p> <p>19 '96, correct? Slipping in the shower or something</p> <p>20 along those lines?</p> <p>21 A. Yes, that's--to my knowledge, that's the</p> <p>22 first medical records that I saw.</p> <p>23 Q. Right, and I'm just talking about what you</p> <p>24 saw. I'm not talking about stuff you haven't seen.</p> <p>25 I'm just going to limit it to the medical records.</p>                                                                                                                                                                              | <p style="text-align: right;">Page 65</p> <p>1 basis for his multiple persistent subjective</p> <p>2 complaints.</p> <p>3 Q. From what you can see from these medical</p> <p>4 records?</p> <p>5 A. Yes.</p> <p>6 Q. All right, so, then, in answer to my</p> <p>7 question, then, you believe he's exaggerating, based</p> <p>8 upon what you've seen?</p> <p>9 A. I don't really like the use that word,--</p> <p>10 Q. Well, what term would you use?</p> <p>11 A. --but I would say that his--again, I would</p> <p>12 say that his, his subjective complaints are grossly</p> <p>13 out of proportion to objective physical findings,</p> <p>14 radiographic studies, et cetera, et cetera, so I guess</p> <p>15 in this case, I would say yes, I believe that he is</p> <p>16 exaggerating his complaints.</p> <p>17 Q. All right. All right, so over the last</p> <p>18 twenty years, he's basically exaggerated this pain</p> <p>19 that he describes as severe pain. Is that your</p> <p>20 testimony?</p> <p>21 A. It appears so, yes.</p> <p>22 Q. All right, and you've never seen Mr. Burt;</p> <p>23 correct?</p> <p>24 A. I've never seen him, no.</p> <p>25 Q. All right, and--well, let me hand you a</p>                                                                                                                                                  |

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| <p style="text-align: right;">Page 66</p> <p>1 document that--if I can find it, it's--let me hand you<br/>2 Petkovich Deposition Exhibit 2.<br/>3 MR. DUGAN: Do you have a copy of that,<br/>4 Counsel?<br/>5 MR. NORWOOD: No, I think I have a copy for<br/>6 you all. In fact, let me see--I probably--<br/>7 MR. DUGAN: Is it a medical record or<br/>8 something else?<br/>9 MR. NORWOOD: I think what I'm going to do,<br/>10 let me swap out, because the problem is, I copied<br/>11 these in color. Let me swap this out. Let me hand<br/>12 you the original, and let me hand you all a set of<br/>13 what we have.<br/>14 BY MR. NORWOOD:<br/>15 Q. And what is Petkovich Deposition Exhibit 2?<br/>16 A. That is a--it appears to be part of my--with<br/>17 the website for my office which describes my office.<br/>18 Q. Okay, and one of the sections on this<br/>19 Exhibit 2, you have, "My approach to treating<br/>20 patients."<br/>21 A. Yes.<br/>22 Q. All right, and one of the things you say in<br/>23 the second paragraph, you say "As an experienced<br/>24 physician with more than 35 years of specialization in<br/>25 orthopedics, I take a highly personal approach to</p> | <p style="text-align: right;">Page 68</p> <p>1 comprehensive evaluation of the patient, correct?<br/>2 A. Yes.<br/>3 Q. And that your goal is to help them achieve a<br/>4 pain-free lifestyle; is that correct?<br/>5 A. Yes.<br/>6 Q. All right, and then in the fifth paragraph,<br/>7 you say, quote, "I work to develop a partnership with<br/>8 my patients," unquote. Correct?<br/>9 A. Yes.<br/>10 Q. What do you mean by that?<br/>11 A. What I mean is to--to work with them to try<br/>12 to achieve a goal, to try to, if they're having<br/>13 whatever their issue is, to work with them to help<br/>14 them achieve their goal working with them.<br/>15 Q. And you do that by visiting--I mean having<br/>16 the patients come see you, and you are talking to them<br/>17 and evaluate what they're suggesting to you in order<br/>18 to try to figure out what's going on, right?<br/>19 A. Yes. I do, I do whatever is appropriate,<br/>20 yes.<br/>21 Q. Whatever is appropriate; all right, and you<br/>22 see on my part, this begins with listening, right?<br/>23 A. Yes.<br/>24 Q. You listen to those patients, correct?<br/>25 A. Yes.</p>                                                                                     |
| <p style="text-align: right;">Page 67</p> <p>1 caring for my patients." Is that correct?<br/>2 A. Yes.<br/>3 Q. All right, and that highly personal approach<br/>4 includes actually seeing the patient to assess what<br/>5 they're telling you; is that correct?<br/>6 A. Yes.<br/>7 Q. All right, and you, in the third--fourth<br/>8 paragraph, you say, second sentence, "This includes a<br/>9 thorough examination of the patient and work history<br/>10 including causation of the injury." Do you see that?<br/>11 MR. DUGAN: Page 1, Doctor, at the very<br/>12 bottom.<br/>13 BY MR. NORWOOD:<br/>14 Q. (Continuing) It's on the first page, last<br/>15 paragraph, second sentence.<br/>16 A. Yes.<br/>17 Q. All right, and then if we turn to the next<br/>18 page, fourth paragraph, you say, quote, "I believe in<br/>19 meeting patients' individual needs through<br/>20 comprehensive evaluation and treatment designed to<br/>21 help them achieve an active, pain-free lifestyle." Do<br/>22 you see that?<br/>23 A. Yes.<br/>24 Q. And that's one of your primary goals as a<br/>25 physician, to make sure that you conduct a</p>                                                    | <p style="text-align: right;">Page 69</p> <p>1 Q. And why do you listen to the patient?<br/>2 A. Well, obviously, that's important, getting<br/>3 the history from a, from a patient, from an<br/>4 individual.<br/>5 Q. I agree with that. We're just--I'm just<br/>6 going on what your approach is. Now, that listening<br/>7 includes listening to whatever their subjective<br/>8 complaints are.<br/>9 A. Yes.<br/>10 Q. All right, and have you had patients who<br/>11 come in and exaggerate their pain to you?<br/>12 A. Yes.<br/>13 Q. All right, and in those cases, what do you<br/>14 do with those patients?<br/>15 A. Well, if I--if I believe that someone--if<br/>16 someone's subjective complaints are out of proportion<br/>17 to their objective physical findings and radiographic<br/>18 studies as I've discussed, then I will tell them that<br/>19 "Based upon everything we've done, we've worked you<br/>20 up, we've done--we've done all these studies, I've<br/>21 repeatedly examined you, and there's really nothing,<br/>22 nothing else that I think needs to be done or should<br/>23 be done, there's really nothing more that I have to<br/>24 offer you."<br/>25 Q. Okay, and in that case, then what happens</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 with that patient?</p> <p>2 A. It depends. Many times, people are</p> <p>3 satisfied with that. People, many times, people, you</p> <p>4 know, sometimes--I mean, you have to understand first</p> <p>5 of all, I have a specialty-type practice, so a lot of</p> <p>6 people with basic--with basic complaints that are not</p> <p>7 substantiated by objective physical findings, et</p> <p>8 cetera, et cetera, don't come to my office. They stay</p> <p>9 at primary care physicians' office, so people that I</p> <p>10 see, though, to answer your question, you know, I work</p> <p>11 them up thoroughly, and if I get to the point where</p> <p>12 there's nothing--I can't find anything there, I will</p> <p>13 tell them that, and sometimes, sometimes people,</p> <p>14 sometimes people have a certain amount of anxiety,</p> <p>15 just fear that they may have something there, and many</p> <p>16 times when you go through everything, people are</p> <p>17 relieved, they feel better, they know there's nothing</p> <p>18 else there and that's it, you know?</p> <p>19 But--anyway, so the point being is if I, if</p> <p>20 I get to a point where I can't find anything else</p> <p>21 there, I will tell them that.</p> <p>22 Q. All right, and then in the sixth paragraph,</p> <p>23 second--third sentence, you say, "Next" --same page,</p> <p>24 or page 2 of 3, you say, "Next, I want my patients to</p> <p>25 understand their conditions," correct?</p> | <p style="text-align: right;">Page 72</p> <p>1 handle each and every patient visit with care and</p> <p>2 proficiency." Correct?</p> <p>3 A. Yes.</p> <p>4 Q. And why is that?</p> <p>5 A. Well, again, you want to do the appropriate</p> <p>6 thing. You see, in pretty basic medical care, you</p> <p>7 want to do the appropriate thing for that person.</p> <p>8 Q. Okay. Now, what is degenerative disc</p> <p>9 disease?</p> <p>10 A. What degenerative disc disease means, it's</p> <p>11 degeneration within a disc, so what a disc is, we're</p> <p>12 talking about the spine again, so throughout the</p> <p>13 spine, between every vertebral body, you have discs,</p> <p>14 you have intervertebral discs, so a disc is made up of</p> <p>15 the--I always explain it's like a jelly donut, so a</p> <p>16 disc has a soft, gelatinous central portion called the</p> <p>17 nucleus pulposus. It has an outer fibrous ring called</p> <p>18 the annulus fibrosis. You have nucleus pulposus, the</p> <p>19 annulus fibrosus, and in a small child, the nucleus</p> <p>20 pulposus is very, very gelatinous, and the outer, the</p> <p>21 outer ring is elastic tissue. That's why it's like a</p> <p>22 jelly donut, and in all of us as we age, we, as we</p> <p>23 age, our spine ages also, so it's been shown that in</p> <p>24 our early twenties, people start to develop some, some</p> <p>25 desiccation. Desiccation means drying out, so they</p> |
| <p style="text-align: right;">Page 71</p> <p>1 A. Now, what paragraph are you looking at, sir?</p> <p>2 Q. I am the sixth paragraph on page 2 of 3,</p> <p>3 third sentence.</p> <p>4 A. Okay, I see it.</p> <p>5 Q. Okay, you say, "I want my patients to</p> <p>6 understand their conditions," correct?</p> <p>7 A. Yes.</p> <p>8 Q. And why is that? Why do you want your</p> <p>9 patients to understand their condition?</p> <p>10 A. Well, I believe in educating people so they</p> <p>11 understand, you know, what's going on.</p> <p>12 Q. All right, and you go further and say,</p> <p>13 quote, "...how it developed and how various treatment</p> <p>14 approaches can improve or repair the problem." Do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. And what do you mean by "various treatment</p> <p>18 approaches"?</p> <p>19 A. Well, again, depending upon what we're</p> <p>20 talking about, sometimes there are treatment options,</p> <p>21 so there are treatment options, and you explain to</p> <p>22 people different options, and what's appropriate and</p> <p>23 what's not appropriate.</p> <p>24 Q. All right, and in the last paragraph, you</p> <p>25 are saying, first sentence, quote, "Our purpose is to</p>                                                                                                                                                                                                                                                                            | <p style="text-align: right;">Page 73</p> <p>1 lose some of the water content in their disc, so just</p> <p>2 gradually, a little bit, so they start to lose some</p> <p>3 water content in their discs, which is what</p> <p>4 desiccation means, drying out a little bit, and with</p> <p>5 that, they can develop a little bit of disc bulging</p> <p>6 over time, and then sometimes, some little--the</p> <p>7 annulus fibrosus can develop what's called annular</p> <p>8 fissuring.</p> <p>9 Q. Okay.</p> <p>10 A. So that's all part of the degenerative</p> <p>11 process, so--</p> <p>12 Q. Let me stop you for one second and I'll let</p> <p>13 you continue.</p> <p>14 The disc bulging, is that something you can</p> <p>15 see on an x-ray?</p> <p>16 A. You can't--you cannot see specific disc</p> <p>17 bulging on x-ray.</p> <p>18 Q. Okay, go ahead.</p> <p>19 A. But I'm explaining to you what--</p> <p>20 Q. Right. I understand.</p> <p>21 A. --what the term, "disc," means.</p> <p>22 Q. I understand. I just wanted to make sure I</p> <p>23 got that--</p> <p>24 A. With that, you are going to see, you are</p> <p>25 going to start to see--with, with that, you are going</p>                                                                                                                                                                                                                                                               |



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| <p style="text-align: right;">Page 74</p> <p>1 to start to see a little bit of the narrowing at that<br/>2 disc space because of the desiccation, so you get a<br/>3 little bit of drawing, you start to get a little<br/>4 narrowing at that space, and that's what we saw on his<br/>5 x-rays. He's got a little--has a little bit of<br/>6 narrowing at the--I believe the C4-5 level in his<br/>7 cervical spine. He's got some at the L5-S1 level at<br/>8 the lumbar spine, so that's part of the idiopathic--<br/>9 "idiopathic" means when something occurs for no<br/>10 reason, so idiopathic is just part of life.<br/>11 Q. Right.<br/>12 A. So he's got some mild degenerative changes<br/>13 in his cervical and lumbar spine which are idiopathic,<br/>14 and that's what degenerative disc--that's what<br/>15 degenerative disc disease or degenerative disc<br/>16 condition means.<br/>17 Q. Does he have any disc bulging?<br/>18 A. I think that by definition, if you have--I<br/>19 think by definition, if you have some degenerative<br/>20 disc disease, you are going to have some bulging--<br/>21 Q. Okay.<br/>22 A. --of that disc, a slight amount of bulging,<br/>23 as part of that degenerative process.<br/>24 Q. Do you know the extent of the bulging as it<br/>25 relates to Mr. Ronald Burt?</p> | <p style="text-align: right;">Page 76</p> <p>1 with that degenerative disc disease, you start to<br/>2 develop some degenerative changes in the facet joints<br/>3 in the back of the spine which are, which are a type<br/>4 of osteoarthritis.<br/>5 Q. Okay. Do you know if, in the context of the<br/>6 course of treatment for Mr. Ronald Burt's back and<br/>7 neck problem--problems, whatever they might be, do you<br/>8 know if the folks at Menard referred him to a<br/>9 specialist such as yourself?<br/>10 A. They--they did not refer him to a<br/>11 specialist.<br/>12 Q. And why do you say that?<br/>13 A. Well, on my review of the records, on my<br/>14 review of the records, I do not see where he was<br/>15 referred outside of their system to a specialist.<br/>16 Q. Okay.<br/>17 MR. DUGAN: We've been an hour and a half.<br/>18 Can we take five at some point.<br/>19 MR. NORWOOD: Of course not. We're on the<br/>20 clock, man.<br/>21 MR. DUGAN: We're not on the clock, man.<br/>22 MR. NORWOOD: No, I'm just joking. Why<br/>23 don't we take a five--minute break, if that's okay.<br/>24 MR. BOOSE: All right, thank you.<br/>25 THE WITNESS: Fine.</p>                                                                                                                                                                     |
| <p style="text-align: right;">Page 75</p> <p>1 A. I don't know the exact--no, I don't know the<br/>2 exact extent of it.<br/>3 Q. Okay.<br/>4 A. It's got to be--it's got to be very mild<br/>5 because of his physical findings,--<br/>6 Q. Okay.<br/>7 A. --so I would say that he probably does have<br/>8 some bulging with those degenerative, with those mild<br/>9 degenerative changes, but the bulging has to be pretty<br/>10 mild with his normal neurologic exam.<br/>11 Q. How would you go about determining the<br/>12 amount of bulging?<br/>13 A. If you had a reason to really want to know<br/>14 how much bulging, you would have to get an MRI.<br/>15 Q. All right, and would you consider the<br/>16 diagnosis--is this the right term for, for Mr. Ronald<br/>17 Burt--degenerative disc disease? Is that a correct<br/>18 diagnosis?<br/>19 A. Yes. I would use, I would use--I would use<br/>20 as a diagnosis what you just said, degenerative disc<br/>21 disease.<br/>22 Q. And does he have osteoarthritis?<br/>23 A. That is, degenerative disc disease is a--I<br/>24 was going to say it's a form of osteoarthritis.<br/>25 Really, it's a--they're akin to each other, because</p>                                                                                                                    | <p style="text-align: right;">Page 77</p> <p>1 (Recess from 10:58 to 11:07<br/>2 BY MR. NORWOOD:<br/>3 Q. Now, Doctor, what--when a patient comes in<br/>4 to see you, what medical records, prior medical<br/>5 history records would you want to look at, if any?<br/>6 A. Well, depends upon the person's complaints,<br/>7 obviously, and--well, it would depend upon your<br/>8 history and their complaints.<br/>9 Q. All right, so if they say they've been<br/>10 complaining for twenty years about back and neck<br/>11 problems, would you want to review those records going<br/>12 back that far?<br/>13 A. No, not necessarily.<br/>14 Q. Under what circumstances would you want to?<br/>15 A. Well, I would go back, I would talk to the<br/>16 person, get a history from them, okay, and then I<br/>17 would, based upon their subjective complaints, you<br/>18 know, then I would examine them, so based upon their<br/>19 subjective complaints and their physical examination,<br/>20 I might get some x-rays, and then I would try to put<br/>21 all that together. If they had--if I, if I found<br/>22 something unusual in there, then I might ask to look<br/>23 at, you know, prior medical records, et cetera, et<br/>24 cetera. You know, certain things would be important,<br/>25 like whether they've had prior surgery before,</p> |



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| <p style="text-align: right;">Page 78</p> <p>1 whatever.</p> <p>2 Q. Okay. With respect to degenerative disc</p> <p>3 disease, what treatment options would there be for</p> <p>4 that condition?</p> <p>5 A. Well, it depends upon--it depends upon the</p> <p>6 degree of degenerative disc disease present. Again,</p> <p>7 that's a broad, broad question, but it would depend</p> <p>8 upon the degree of degenerative disc disease, it would</p> <p>9 depend upon someone's subjective complaints and their</p> <p>10 objective physical findings. If someone had, you</p> <p>11 know, very mild degenerative disc disease changes as</p> <p>12 Mr. Burt has, then I would have treated him like he</p> <p>13 was treated, just with a mild antiinflammatory</p> <p>14 medication.</p> <p>15 Q. Over-the-counter medicine?</p> <p>16 A. I would start, I would have started off with</p> <p>17 a mild dose of an antiinflammatory medication. If he</p> <p>18 had some persistent subjective complaints despite</p> <p>19 that, then I would have increased his dose.</p> <p>20 Q. Okay. If a person comes in, a patient, and</p> <p>21 subjectively presents with severe back and neck pain,</p> <p>22 and the source of that pain can't be determined from</p> <p>23 an x-ray, would you order a CT scan or an MRI test to</p> <p>24 see if something else is present that can't be seen on</p> <p>25 an x-ray?</p> | <p style="text-align: right;">Page 80</p> <p>1 ultimately turned out that there was something else</p> <p>2 going on that couldn't get picked up by an x-ray;</p> <p>3 correct?</p> <p>4 A. Well, yes, there are certain situations</p> <p>5 where x-rays don't pick up everything.</p> <p>6 Q. Right.</p> <p>7 A. Period.</p> <p>8 Q. Right.</p> <p>9 A. But you have to take that in conjunction</p> <p>10 with the history and physical examination.</p> <p>11 Q. I understand that, but I'm talking about</p> <p>12 your 37 years of practice, right? There have been</p> <p>13 situations where you've looked at an x-ray and you</p> <p>14 don't see anything, and everything looks normal on the</p> <p>15 x-ray; correct?</p> <p>16 A. Yes. I wouldn't say that I don't see</p> <p>17 anything, but I have had situations where people have</p> <p>18 had issues and had plain x-rays that are unremarkable.</p> <p>19 Q. Right. Okay, unremarkable. Okay, and then</p> <p>20 it was only when you did the further testing such as</p> <p>21 an MRI or CT scan where you found something that was</p> <p>22 troubling. Is that a fair statement?</p> <p>23 A. It's a fair statement, yes, in conjunction</p> <p>24 with other, you know, physical findings, et cetera, et</p> <p>25 cetera.</p>                                                       |
| <p style="text-align: right;">Page 79</p> <p>1 MR. BOOSE: Objection to form.</p> <p>2 A. It would depend upon the history given to me</p> <p>3 by the individual, and it would depend upon their</p> <p>4 physical examination findings, and then it would also</p> <p>5 depend upon the--based on x-rays.</p> <p>6 BY MR. NORWOOD:</p> <p>7 Q. So you would look at the patient, listen to</p> <p>8 what the patient is saying about his condition, how</p> <p>9 long he's been complaining about the condition, what</p> <p>10 you observed based upon your examination, and what's</p> <p>11 based on the radiological findings that you have, in</p> <p>12 this case, an x-ray, right?</p> <p>13 A. And then--yes, and then I, based upon all of</p> <p>14 that, I would determine whether or not I thought any</p> <p>15 further diagnostic evaluation or treatment was</p> <p>16 necessary.</p> <p>17 Q. Such as the CT scan on MRI?</p> <p>18 A. Well, yeah, a CT scan and MRI are obviously</p> <p>19 further radiographic studies,--</p> <p>20 Q. Right.</p> <p>21 A. --so based upon everything I said, I would</p> <p>22 make a determination whether or not--whether or not I</p> <p>23 thought those further studies were indicated.</p> <p>24 Q. Now, you've had situations where you've</p> <p>25 looked at an x-ray and found nothing, and it</p>                                                           | <p style="text-align: right;">Page 81</p> <p>1 Q. I understand that. I understand that other</p> <p>2 physical findings, but what I'm saying is that if you</p> <p>3 had relied solely on the x-ray, you would have missed</p> <p>4 something. Is that a fair statement?</p> <p>5 MR. DUGAN: Objection to the form,</p> <p>6 foundation.</p> <p>7 A. Well, I wouldn't rely only on the x-rays. I</p> <p>8 mean, you don't rely, you don't rely on one thing. As</p> <p>9 part of medicine, you try to put everything together.</p> <p>10 BY MR. NORWOOD:</p> <p>11 Q. Well, I understand that. What I'm talking</p> <p>12 about, from the radiological evidence standpoint, you</p> <p>13 have had cases whereby you've received complaints,</p> <p>14 you've examined the patient, and you've looked at an</p> <p>15 x-ray, and based on the x-ray, it didn't mesh with the</p> <p>16 complaints being given by the patient. You've had</p> <p>17 situations like that, haven't you?</p> <p>18 A. Yes, I have had situations where people's,</p> <p>19 where people's x-rays are unremarkable that will have</p> <p>20 subjective complaints, physical findings that</p> <p>21 are--that concern me--</p> <p>22 Q. Right.</p> <p>23 A. --where I have pursued further diagnostic</p> <p>24 evaluation.</p> <p>25 Q. Right, and my point is that in those</p> |

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| <p style="text-align: right;">Page 82</p> <p>1 circumstances you've just identified--let's focus on<br/>2 those circumstances--had you stopped and relied solely<br/>3 upon the radiological evidence you had in front of you<br/>4 and not done this further radiological evaluation,<br/>5 whatever that might be, you would have missed<br/>6 something. Is that a fair statement?<br/>7 MR. DUGAN: Objection to the form of the<br/>8 question. You are mischaracterizing his prior<br/>9 testimony as to how he looked at the entire situation,<br/>10 the entire patient.<br/>11 Subject to that, Doctor.<br/>12 MR. BOOSE: Join.<br/>13 A. First of all, I wouldn't stop. That's my<br/>14 opinion.<br/>15 BY MR. NORWOOD:<br/>16 Q. Well, no, no, no, no, I understand that. I<br/>17 understand that, but for whatever reason you decide to<br/>18 stop, that "Based upon what I see," that's--"and<br/>19 looking at this x-ray, it looks unremarkable," you<br/>20 wouldn't stop is what you are saying, right?<br/>21 MR. DUGAN: Form, foundation; improper,<br/>22 incomplete hypothetical.<br/>23 MR. BOOSE: Join.<br/>24 A. You are right. If someone had certain<br/>25 physical findings and certain subjective complaints of</p> | <p style="text-align: right;">Page 84</p> <p>1 Q. Well, let's talk about it in general for us<br/>2 lay people.<br/>3 A. But numbness and tingling can mean that<br/>4 you've got a--you've got a, a little--you hit your<br/>5 arm, and you bruise a nerve and get some numbness and<br/>6 tingling,--<br/>7 Q. Right.<br/>8 A. --it's no, no big deal.<br/>9 Q. Right.<br/>10 A. But I think--<br/>11 Q. But it can also mean a significant problem<br/>12 as relates to the spine.<br/>13 A. It can, yes.<br/>14 Q. Okay.<br/>15 A. That's what I was going to say, so numbness<br/>16 and tingling can also be consistent with some<br/>17 neurologic issue from the spine. It could be, it can<br/>18 be consistent with some underlying spinal cord or<br/>19 nerve root compression coming out of the spine, it<br/>20 could be consistent with an upper extremity peripheral<br/>21 neuropathy, so it can mean a lot of different things.<br/>22 Q. All right, in order to rule out some of<br/>23 those things, would further radiological testing<br/>24 beyond an x-ray be necessary?<br/>25 A. Not necessarily. As I stated, you can do a</p> |
| <p style="text-align: right;">Page 83</p> <p>1 physical findings, even if their x-rays were<br/>2 unremarkable, then I wouldn't stop, I would get<br/>3 further evaluation.<br/>4 BY MR. NORWOOD:<br/>5 Q. Why?<br/>6 A. Because I would be concerned that there was<br/>7 something going on because of the reasons I mentioned,<br/>8 because of the history given to me, their physical<br/>9 examination, et cetera, et cetera.<br/>10 Q. All right. In reviewing the medical<br/>11 records, did you see anything in those records to<br/>12 suggest that Mr. Burt was experiencing numbness or<br/>13 tingling?<br/>14 A. I do remember in some of the records, he had<br/>15 some subjective complaints, I believe, of some<br/>16 numbness or tingling.<br/>17 Q. Do you know a Dr. Robert Colwell?<br/>18 A. No.<br/>19 Q. Okay. What does numbness and tingling add<br/>20 to the equation as relates to spinal complaints?<br/>21 A. Numbness and tingling can mean a lot of<br/>22 different things.<br/>23 Q. Okay.<br/>24 A. Okay, so I mean we could talk about that all<br/>25 afternoon.</p>                                                                                                                                      | <p style="text-align: right;">Page 85</p> <p>1 physical examination on someone, and in doing a<br/>2 physical examination, extremity examination, in this<br/>3 case, that was normal.<br/>4 Q. I'm not talking about in this case, I'm<br/>5 talking about in general, somebody is saying, "I've<br/>6 got pain, and I've got numbness and tingling in my<br/>7 arms," for instance. Would you then, based upon that<br/>8 type of complaint, be concerned?<br/>9 MR. BOOSE: Objection; incomplete<br/>10 hypothetical.<br/>11 MR. DUGAN: I join.<br/>12 A. I would take a further history from that<br/>13 person,--<br/>14 BY MR. NORWOOD:<br/>15 Q. Okay.<br/>16 A. --and then I would do a physical<br/>17 examination.<br/>18 Q. All right, and you do a physical examination<br/>19 and you look at an x-ray, it doesn't--it's an<br/>20 unremarkable x-ray but they complain about numbness<br/>21 and tingling, say, for three days, does that concern<br/>22 you in any way?<br/>23 MR. BOOSE: Same objection.<br/>24 A. Not necessarily.<br/>25 BY MR. NORWOOD:</p>                                                                            |

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| <p style="text-align: right;">Page 86</p> <p>1 Q. What would necessarily concern you in that<br/>2 regard?</p> <p>3 A. It would concern me if they had any--any<br/>4 significant motor weakness, any reflex abnormalities,<br/>5 any positive physical findings, any--many things would<br/>6 concern me. Any weight loss over a period of time, so<br/>7 other things in the history and physical examination<br/>8 might concern me.</p> <p>9 Q. Okay.</p> <p>10 (Pause for perusal of documents.)</p> <p>11 Let me hand you what's been marked as<br/>12 Petkovich Deposition Exhibit 3. Have you seen that<br/>13 before?</p> <p>14 A. Yeah. This is something from the American<br/>15 Academy of Orthopedic Surgery. It's just a little--<br/>16 it's just a little information booklet on spine<br/>17 basics.</p> <p>18 Q. Right.</p> <p>19 A. So I'm not sure I've seen this exact page<br/>20 before, but there are a lot of these out there.</p> <p>21 Q. What is the American Academy of Orthopedic<br/>22 Surgeons?</p> <p>23 A. That is an organization that is a--located<br/>24 outside of Chicago, the international headquarters for<br/>25 it, and that's the--all orthopedic surgeons have an</p> | <p style="text-align: right;">Page 88</p> <p>1 A. Yes.</p> <p>2 Q. And it breaks up the cervical spine, the<br/>3 thoracic spine, the lumbar spine. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And then it talks about the sacrum and the<br/>6 coccyx?</p> <p>7 A. Yes.</p> <p>8 Q. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Does that appear to be a fair and accurate<br/>11 depiction of what we've been talking about as it<br/>12 relates to the spine?</p> <p>13 A. Yes.</p> <p>14 Q. All right, and then on that first page, the<br/>15 last paragraph, it says, quote, "Scoliosis is another<br/>16 type of spinal deformity. When viewing the spine from<br/>17 the front or back, scoliosis is a sideways curvature<br/>18 that makes the spine look like an 'S' or a 'C,' rather<br/>19 than a straight 'I.'" Is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. All right, so--and is that a fair assessment<br/>22 of what you understand scoliosis to be?</p> <p>23 A. Yes.</p> <p>24 Q. All right, and then if we go to the next<br/>25 page, there's some more extensive depictions of</p>                                                                                                                             |
| <p style="text-align: right;">Page 87</p> <p>1 option to belong to that if they are certified by the<br/>2 American Board of Orthopedic Surgery.</p> <p>3 Q. And are you a member of that organization?</p> <p>4 A. Yes.</p> <p>5 Q. All right, and in fact, you referenced the<br/>6 American Association--I'm sorry, American Academy of<br/>7 Orthopedic Surgeons and this particular website on<br/>8 your website, correct?</p> <p>9 A. Yes.</p> <p>10 Q. All right, why do you do that? Why do you<br/>11 refer to them and these particular website<br/>12 publications on your website?</p> <p>13 A. Just as a--just as a--to direct individuals,<br/>14 patients that want to look at that website to direct<br/>15 them where to look--</p> <p>16 Q. Okay.</p> <p>17 A. --for information.</p> <p>18 Q. And do you believe that information posted<br/>19 by the American Academy of Orthopedic Surgeons is<br/>20 accurate information?</p> <p>21 A. Yes.</p> <p>22 Q. All right. All right, let's take a look at<br/>23 Exhibit Number 3, there, you have, and this talks<br/>24 about the spine basics on the first page? You see<br/>25 that?</p>                                                        | <p style="text-align: right;">Page 89</p> <p>1 various facets of the spinal cord; three in<br/>2 particular. The two on the right breaks down the part<br/>3 of the lumbar spine. Does that appear to be a fair<br/>4 and accurate depiction of that lumbar spine?</p> <p>5 A. Yes.</p> <p>6 Q. All right, and then the lower graphic is, is<br/>7 a sort of sideways cut through the spine? Is that<br/>8 correct?</p> <p>9 A. It's a horizontal cut through the spine--</p> <p>10 Q. Horizontal. I'm sorry.</p> <p>11 A. --that shows a--it's actually a horizontal<br/>12 cut through the spine in the mid portion of a disc<br/>13 that anatomically shows what I mentioned earlier, the<br/>14 nucleus pulposus, the annulus fibrosus, where<br/>15 they--where they exist in the spine, and its<br/>16 relationship to the spinal cord and spinal nerves.</p> <p>17 Q. Okay. All right, let me hand you what's<br/>18 been marked as Petkovich Deposition Exhibit 4, and<br/>19 that is also one of those publications from the<br/>20 website of the American Academy of Orthopedic<br/>21 Surgeons; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And this one addresses x-rays, CAT scans,<br/>24 and MRI's.</p> <p>25 A. Yes.</p> |

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| <p style="text-align: right;">Page 90</p> <p>1 Q. Is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. All right, and let me read through the first</p> <p>4 paragraph of this website publication by the AAOS. It</p> <p>5 says, quote, "Diagnostic imaging techniques help</p> <p>6 narrow the causes of an injury or illness and ensure</p> <p>7 that the diagnosis is accurate." Is that correct?</p> <p>8 A. That's what the first sentence says, yes.</p> <p>9 Q. And you agree with that, right?</p> <p>10 A. Yes.</p> <p>11 Q. I mean, that's what the purpose of those,</p> <p>12 to--to make sure you have an accurate diagnosis;</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. All right, and it goes further in that same</p> <p>16 paragraph. It says, "These techniques include x-rays,</p> <p>17 computer tomography, CT scans, magnetic resonance</p> <p>18 imaging, MRI." Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then the second paragraph says, "These</p> <p>21 imaging tools let your doctor 'see' inside your body</p> <p>22 to get a 'picture' of your bones, organs, muscles,</p> <p>23 tendons, nerves and cartilage." Correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then it goes further and says, "This is</p> | <p style="text-align: right;">Page 92</p> <p>1 Q. All right. Now, let's go to the MRI, last</p> <p>2 paragraph under MRI. It says, "An MRI may help your</p> <p>3 doctor to diagnose your torn knee ligaments and</p> <p>4 cartilage, torn rotator cuffs, herniated discs, hip</p> <p>5 and pelvic problems, and other problems." Do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. What's a herniated disc?</p> <p>9 A. A herniated disc is when I talked about the</p> <p>10 anatomy of a--of a disc, I talked about the nucleus</p> <p>11 pulposus being the jelly portion of the donut and the</p> <p>12 annulus fibrosis being the dough. What a herniated</p> <p>13 disc is, is when the nucleus pulposus ruptures or</p> <p>14 herniates out through the annulus fibrosis, so that's</p> <p>15 what a herniated disc is.</p> <p>16 Q. Okay.</p> <p>17 A. So we go through the herniated disc, and</p> <p>18 when it becomes clinically significant is if it's</p> <p>19 pushing on a nerve root or the spinal cord.</p> <p>20 Q. Are there different degrees of severity as</p> <p>21 relates to herniated discs?</p> <p>22 A. Yes.</p> <p>23 Q. And what are those degrees in severity?</p> <p>24 A. Well, there's extreme variability in</p> <p>25 severity. It's just a small, a small bulge can</p>                                                                                                                                                                               |
| <p style="text-align: right;">Page 91</p> <p>1 the way a doctor can determine if there are any</p> <p>2 abnormalities." Is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you agree with that?</p> <p>5 A. Yes.</p> <p>6 Q. All right. Now, let's go down to the</p> <p>7 section under CT scans, and the last paragraph says,</p> <p>8 "You may need a CT scan if you have any problem with a</p> <p>9 small, bony structure or if you have severe trauma to</p> <p>10 the brain, spinal cord, chest, abdomen, or pelvis."</p> <p>11 You see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you agree with that?</p> <p>14 A. Yes.</p> <p>15 Q. Let's go to the next paragraph--next page,</p> <p>16 I'm sorry, first paragraph. It says, "A CT scan costs</p> <p>17 more and takes more time than a regular X-ray." Do</p> <p>18 you see that?</p> <p>19 A. Yes.</p> <p>20 Q. You agree with that?</p> <p>21 A. Yes.</p> <p>22 Q. It's a more costly procedure, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Same with an MRI, correct? More costly?</p> <p>25 A. Yes.</p>                                                                                                                                                                         | <p style="text-align: right;">Page 93</p> <p>1 represent a--what the word "herniated" means is, what</p> <p>2 the word "hernia" means is violation of a border, so</p> <p>3 if someone has a hernia anywhere in their body, it</p> <p>4 means you have a tissue plane where the fascial--the</p> <p>5 tissue has started to bulge and that it's going beyond</p> <p>6 that border, that contained border, so that's what the</p> <p>7 word "hernia" means, so a herniated disc--so anytime</p> <p>8 you have a--anytime you have a bulging disc, when you</p> <p>9 do have a small bulge, you, by definition, have a</p> <p>10 little bit of a--of a--that's worn down secondary to</p> <p>11 the desiccation I talked about, you are going to have</p> <p>12 to do a little bit of bulging of that wall, so that,</p> <p>13 you know, some people could argue that's the very</p> <p>14 early stages of herniation. It becomes a matter of</p> <p>15 semantics, but--so that's an early stage, and you can</p> <p>16 have a--a full-blown clinical disc herniation is when</p> <p>17 you actually get a, you actually get a protrusion of</p> <p>18 the nuclear material, nucleus pulposus, out towards</p> <p>19 pushing on one of the structures we talked about.</p> <p>20 Q. Or a nerve?</p> <p>21 A. Well, one of the structures meaning a nerve</p> <p>22 or spinal cord, et cetera.</p> <p>23 Q. Is a herniated disc the same thing as a</p> <p>24 bulging disc?</p> <p>25 A. No. No.</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 Q. Okay, what's the difference between those<br/>2 two?</p> <p>3 A. Well, it becomes a matter of semantics, as I<br/>4 tried to say. A bulging disc is just--I think anytime<br/>5 somebody has any degree of desiccation, degenerative<br/>6 changes in a disc, they are, by definition, going to<br/>7 get a little bit of a bulge, okay? So you could--I<br/>8 mean, somebody could theoretically argue that early<br/>9 bulge, that there's a little bit of the weakening in<br/>10 the wall in order to get the bulge, and some people<br/>11 argue that's--is that theoretically, is that an early<br/>12 herniation because you have a little bit of weakening<br/>13 of that wall, but most, most--most people that treat<br/>14 these problems don't consider that a herniation.</p> <p>15 Q. Okay.</p> <p>16 A. Most, most--okay, so yes.</p> <p>17 Q. Okay, is it fair to say that in the case of<br/>18 herniation, that would be a bulging problem in more<br/>19 extreme fashion? Is that a fair statement?</p> <p>20 A. It's more--a true, a true herniated disc, a<br/>21 true clinical herniated disc is when the nuclear<br/>22 material ruptures or herniates out through the annulus<br/>23 fibrosus and is causing some--causing some effect on<br/>24 the spinal canal, or a nerve root, or the spinal cord.</p> <p>25 Q. So it starts as a bulge, and ultimately, it</p> | <p style="text-align: right;">Page 96</p> <p>1 that don't treat a lot of these, and it gets<br/>2 confusing.</p> <p>3 Q. All right, can you see a herniated disc on<br/>4 an x-ray?</p> <p>5 A. You cannot see the soft tissue structures on<br/>6 an x-ray, so you cannot see a--you cannot see a<br/>7 herniated disc on a plain x-ray.</p> <p>8 Q. So if you were trying to determine if<br/>9 someone had a herniated disc, what would you do?</p> <p>10 A. If I saw someone that I suspected that they<br/>11 had a herniated disc and their subjective complaints<br/>12 and objective physical findings correlated with that,<br/>13 then I would get an MRI.</p> <p>14 Q. All right. Now, the only way you can<br/>15 determine that, you couldn't do it on an x-ray?</p> <p>16 A. Well, you can do a myelogram, you can do a<br/>17 myelogram where you put dye in the spine and x-ray--</p> <p>18 Q. I understand that's another, that's a<br/>19 different test, right?</p> <p>20 MR. DUGAN: Let him finish his answer,<br/>21 Counsel, please.</p> <p>22 MR. NORWOOD: Well, he's not answering my<br/>23 question, so let me cut him off, and I'm trying to get<br/>24 from point A to point B.</p> <p>25 BY MR. NORWOOD:</p>                                                                                   |
| <p style="text-align: right;">Page 95</p> <p>1 bulges out to interfere with one of those other<br/>2 structures. Is that a fair statement?</p> <p>3 A. Well, it doesn't have to start off as a<br/>4 bulge.</p> <p>5 Q. Right.</p> <p>6 A. It doesn't have to start off as a bulge.</p> <p>7 Q. It can rupture and--</p> <p>8 A. Somebody could have an acute torsional-type<br/>9 injury to where they have an acute herniation in an<br/>10 otherwise relatively healthy disc.</p> <p>11 Q. But it is a bulge of some sort; is that<br/>12 right?</p> <p>13 A. I would say that a, a herniated disc is a--<br/>14 is a--I--is a protrusion.</p> <p>15 Q. Protrusion?</p> <p>16 A. So where the disc is protruding. It's a<br/>17 protrusion.</p> <p>18 Q. So you wouldn't categorize that as a bulge?</p> <p>19 A. Well, I wouldn't disagree with that.</p> <p>20 Q. All right.</p> <p>21 A. I wouldn't disagree with using those terms.<br/>22 That's what I'm saying, the terms become--the terms<br/>23 become a matter--I'm repeating myself--semantics, and<br/>24 you get some people that don't really--you get some<br/>25 physicians that don't really use these words properly,</p>                                                                                                                                                                                                                                                | <p style="text-align: right;">Page 97</p> <p>1 Q. The x-ray, as you indicated, doesn't show<br/>2 soft tissue.</p> <p>3 A. Plain x-rays do not show soft tissue.</p> <p>4 Q. Plain x-rays, but there are other types of<br/>5 procedures that could show, for instance, a herniated<br/>6 disc, and what I'm trying to figure out is, there's<br/>7 MRI. What else could you use to determine if someone<br/>8 had a herniated disc?</p> <p>9 A. Radiographically, you do MRI. A CT scan is<br/>10 going to show it, but not in the same detail, but it's<br/>11 going to give an idea, and then another study is doing<br/>12 a myelogram, where you inject some dye in someone's<br/>13 spinal canal, and then following the dye, you either<br/>14 get plain x-rays or a CT scan following that.</p> <p>15 Q. Okay. I got you. I got you.</p> <p>16 Okay, let me hand you a document marked as<br/>17 Petkovich Deposition Exhibit 5, and again, that's<br/>18 another publication from the AAOS addressing the issue<br/>19 of neck pain? Is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. All right, and at the end of the first<br/>22 paragraph, it says, "For many people, neck pain is a<br/>23 temporary condition that disappears over time." Is<br/>24 that a fair and accurate statement?</p> <p>25 A. Yes.</p> |



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| <p style="text-align: right;">Page 98</p> <p>1 Q. And you agree with that?</p> <p>2 A. Yes.</p> <p>3 Q. All right, then it says, "Others need</p> <p>4 medical diagnosis and treatment to relieve their</p> <p>5 symptoms." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you agree with that?</p> <p>8 A. Yes.</p> <p>9 Q. All right, and then there's a nice graphic,</p> <p>10 or a photo or sketch that lays out the brain, the</p> <p>11 spinal cord, the spinal nerves. Is that a fair</p> <p>12 assessment of what they describe as a normal neck</p> <p>13 anatomy?</p> <p>14 A. Yes.</p> <p>15 Q. All right, and normal, it looks like it's</p> <p>16 straight, right? Do you see any curvatures in there</p> <p>17 in that photo or sketch?</p> <p>18 A. No, there are no curvatures in this photo,</p> <p>19 but as far as straight, the cervical spine, which is</p> <p>20 what this is a picture of, normally in a sagittal</p> <p>21 view, a sagittal view, which is a side view, people--</p> <p>22 it's not straight. We have what is called lordosis,</p> <p>23 so everybody's neck, cervical spine in a side view has</p> <p>24 a certain amount of backward lordosis, which is</p> <p>25 normal, and then but--</p> | <p style="text-align: right;">Page 100</p> <p>1 Q. So the most common neck problems are soft</p> <p>2 tissue abnormalities; correct?</p> <p>3 A. Yes.</p> <p>4 Q. All right. It says, "In rare instances,</p> <p>5 infection or tumors may cause neck pain." Do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. Can you see infections or tumors on an</p> <p>9 x-ray?</p> <p>10 A. Sometimes you can, and sometimes you can't.</p> <p>11 Q. All right. It goes further and says, "In</p> <p>12 some people, neck problems may be the source of pain</p> <p>13 in the upper back, shoulders, and arms." Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. All right, and then there's a section that</p> <p>17 talks about cervical disc degeneration. What is</p> <p>18 cervical disc degeneration?</p> <p>19 A. Cervical disc degeneration is what I</p> <p>20 described earlier, degenerative cervical disc disease,</p> <p>21 also referred to as cervical spondylosis, and what</p> <p>22 that is, it means that you have the degeneration of</p> <p>23 that disc where you are losing some of the water</p> <p>24 content in there; you start to get some desiccation,</p> <p>25 some drying, et cetera, et cetera.</p>                                                                           |
| <p style="text-align: right;">Page 99</p> <p>1 Q. This is a side view or a back view?</p> <p>2 A. No, no, I'm just saying in a side view--this</p> <p>3 is a, a front-to-back view.</p> <p>4 Q. Right.</p> <p>5 A. On a front-to-back view, normally, there is</p> <p>6 no curvature.</p> <p>7 Q. Okay, in a normal spine.</p> <p>8 A. Yes.</p> <p>9 Q. All right. Now, it says, "Cause." Do you</p> <p>10 see that section on--</p> <p>11 A. Yes.</p> <p>12 Q. --Exhibit 5? It says, "Neck pain may result</p> <p>13 from abnormalities in the soft tissues, the muscles,</p> <p>14 ligaments and nerves, as well as in the bones and</p> <p>15 discs of the spine." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. You agree with that?</p> <p>18 A. Yes.</p> <p>19 Q. All right. It says, "The most common causes</p> <p>20 of neck pain are soft tissue abnormalities due to an</p> <p>21 injury," and then in parentheses, it has "a sprain or</p> <p>22 prolonged wear and tear." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you agree with that?</p> <p>25 A. Yes.</p>                                                                                                                                                    | <p style="text-align: right;">Page 101</p> <p>1 Q. So does Mr. Ronald Burt have spondylosis?</p> <p>2 A. Yes, and this says it right here.</p> <p>3 Degenerative disc disease is the same thing as</p> <p>4 spondylosis.</p> <p>5 Q. Okay.</p> <p>6 A. And that's what--in this article, this</p> <p>7 article you are referencing right here, it says that</p> <p>8 in cervical degenerative disc degeneration which</p> <p>9 typically occurs in people age 40 and older,--</p> <p>10 Q. Right.</p> <p>11 A. --the normal gelatinous structure center of</p> <p>12 the disc degenerates and the space between the</p> <p>13 vertebrae narrows, so that's what I was talking about</p> <p>14 earlier, the jelly donut.</p> <p>15 Q. All right, and then it goes further, says,</p> <p>16 "As the disc space narrows, added stress is applied to</p> <p>17 the joints of the spine causing further wear and</p> <p>18 degenerative disease." Correct?</p> <p>19 A. Yeah.</p> <p>20 Q. And you agree with that?</p> <p>21 A. Yes. That's what I was talking to earlier</p> <p>22 about the facet joints in the back of the spine.</p> <p>23 That's all part of the degenerative process.</p> <p>24 Q. Okay. It says, "The cervical disc may also</p> <p>25 protrude and put pressure on the spinal cord or nerve</p> |



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| <p style="text-align: right;">Page 102</p> <p>1 roots when the rim of the disc weakens." Do you agree<br/>2 with that?<br/>3 A. Yes.<br/>4 Q. And this is known as a herniated cervical<br/>5 disc, correct?<br/>6 A. Yes.<br/>7 Q. And to make that determination, you would<br/>8 need an MRI. Is that--or some other type of test<br/>9 beyond an x-ray; correct?<br/>10 A. Well, no, what determination are you talking<br/>11 about?<br/>12 Q. A determination of whether or not someone<br/>13 has a herniated cervical disc.<br/>14 A. Well, it's irrelevant. I mean, you are<br/>15 examining the person, you are doing--taking a history,<br/>16 you are taking a history, you are doing a physical<br/>17 examination, et cetera, et cetera, so--<br/>18 Q. Yeah, I understand all that, but I'm just<br/>19 saying--<br/>20 MR. DUGAN: Let him finish his answer.<br/>21 A. But everybody--<br/>22 MR. NORWOOD: But he's not answering my<br/>23 question, so I'm going to stop you, okay?<br/>24 BY MR. NORWOOD:<br/>25 Q. My question is simple. I understand all of</p>                        | <p style="text-align: right;">Page 104</p> <p>1 incomplete hypothetical.<br/>2 BY MR. NORWOOD:<br/>3 Q. (Continuing) Okay, subject to that.<br/>4 A. Okay, my answer is that I know that this man<br/>5 has this--we're talking about a cervical spine, this<br/>6 mild degenerative cervical disc disease.<br/>7 MR. NORWOOD: Excuse me. Let me stop you.<br/>8 I'm going to stop you. I'm not talking about Ronald<br/>9 Burt, I'm talking about Ronald Norwood, Attorney at<br/>10 Law, who is sitting in this chair, and my question is<br/>11 a simple question, Doctor, so we can move on. If I<br/>12 wanted to determine today if I had a herniated disc,<br/>13 can I determine that by having an x-ray?<br/>14 MR. BOOSE: Same objections.<br/>15 MR. DUGAN: Join.<br/>16 A. You can't determine that--well, it depends<br/>17 on what your x-rays show. If your, if your x-rays--if<br/>18 your x-rays show some mild degenerative changes at a<br/>19 disc space level, then by definition, you've got some<br/>20 desiccation there. By definition, you have some bulge<br/>21 because of that desiccation, and--and what I said<br/>22 earlier, by definition, when you have a bulge, you<br/>23 have a degree of weakening of that wall, and you<br/>24 could--a matter of semantics whether or not you want<br/>25 to call that a herniated disc. It's not clinically</p> |
| <p style="text-align: right;">Page 103</p> <p>1 that. I'm just trying to figure out as we sit here<br/>2 today, if we wanted to figure out if I had a herniated<br/>3 disc, can I determine that with an x-ray.<br/>4 MR. DUGAN: And he was answering that, and<br/>5 you didn't let him finish.<br/>6 MR. NORWOOD: No, he wasn't answering me,<br/>7 because I just changed the question, so you--you are<br/>8 wrong.<br/>9 MR. BOOSE: Object to the--<br/>10 MR. NORWOOD: I'm changing the question--<br/>11 MR. BOOSE: --form and foundation--sorry,<br/>12 form and incomplete hypothetical.<br/>13 MR. NORWOOD: Let me change the question.<br/>14 MR. DUGAN: All right, let's--<br/>15 MR. NORWOOD: I withdrew the other<br/>16 question,--<br/>17 MR. DUGAN: Okay.<br/>18 MR. NORWOOD: --and I'm going down another<br/>19 path.<br/>20 BY MR. NORWOOD:<br/>21 Q. Ronald Norwood, Attorney at Law, wants to<br/>22 know if he has a herniated disc, and my question for<br/>23 you is whether I can have an x-ray and make that<br/>24 determination.<br/>25 MR. BOOSE: Objection as to form and</p> | <p style="text-align: right;">Page 105</p> <p>1 what most people treat--most spine surgeons wouldn't<br/>2 call that a herniated disc, but if you want to get to<br/>3 the basic semantics, some people would call all, any<br/>4 bulging disc a degree of herniation. It becomes<br/>5 clinically insignificant, but some people, some<br/>6 people, if you want to be a purist about everything,<br/>7 you could argue that any bulge whatsoever is a type of<br/>8 a herniation.<br/>9 BY MR. NORWOOD:<br/>10 Q. And I understand there are purists out<br/>11 there, but I'm asking you, since you are our expert in<br/>12 this case, can you determine whether or not I have a<br/>13 herniated disc by an x-ray?<br/>14 MR. DUGAN: Asked and answered.<br/>15 A. If I looked at, if I looked at x-rays that<br/>16 showed to me that there were some degenerative changes<br/>17 there,--<br/>18 BY MR. NORWOOD:<br/>19 Q. Okay.<br/>20 A. --that would mean to me there is, by<br/>21 definition, some degenerative bulging of that disc;<br/>22 okay?<br/>23 Q. Right.<br/>24 A. And then I would exam--just by those x-rays,<br/>25 I would know that.</p>                                                                                                                                                                                                                      |

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| <p style="text-align: right;">Page 106</p> <p>1 Q. Okay.</p> <p>2 A. Whether or not that's clinically</p> <p>3 significant, then I would want to examine the patient.</p> <p>4 Q. Right.</p> <p>5 A. And do a--take a history from the patient,</p> <p>6 do a physical examination of the patient, and then,</p> <p>7 and then I would want to make a decision whether</p> <p>8 anything else is necessary.</p> <p>9 Q. I understand all of that, but you didn't</p> <p>10 answer my question, so I just want to make sure we</p> <p>11 understand your opinion. You are saying that from</p> <p>12 that x-ray of Ronald Norwood, if it shows disc</p> <p>13 degeneration, that would indicate to you that I have a</p> <p>14 herniated disc. Is that what you are testifying to</p> <p>15 today?</p> <p>16 A. If you--yes, that's what I'm saying to you,</p> <p>17 I'm saying that to you today, sir, if you want to use</p> <p>18 that--if you want to be a purist about everything, I</p> <p>19 would say "Mr. Norwood, you've got a little bit of--</p> <p>20 you've got some degeneration here. I know you've got</p> <p>21 a little bit of a bulge."</p> <p>22 You say "What is that?"</p> <p>23 I would say "Well," I would go through the</p> <p>24 exam, and you'd say to me, "Well, is that a disc</p> <p>25 herniation?" I'd give you the same spiel. I'd say,</p>    | <p style="text-align: right;">Page 108</p> <p>1 Q. Which disc, though, are we talking about?</p> <p>2 Which disc is herniated?</p> <p>3 A. Well, in this case--well, in--in this case,</p> <p>4 here, in Mr. Burt's example, that there's some mild</p> <p>5 degenerative changes at C4, at C4-5, so in this case,</p> <p>6 it's going to be the C5 nerve root, okay? So you are</p> <p>7 going to check to see if there's any, if there's any</p> <p>8 symptoms over that C5 nerve root, are there any</p> <p>9 physical findings, any--any subjective symptoms, any</p> <p>10 subjective complaints, any physical findings over that</p> <p>11 C5 nerve root, and then if there are not, then you are</p> <p>12 going to say, you know, you are going to say, you</p> <p>13 know, "You've got this little mild degenerative</p> <p>14 changes there, you've got a normal physical</p> <p>15 examination," and you don't do anything about it. You</p> <p>16 would treat them with a low-dose antiinflammatory</p> <p>17 medication.</p> <p>18 Q. So I just want to make sure I'm clear on</p> <p>19 your answer. Yes, you can determine disc herniation</p> <p>20 by an x-ray?</p> <p>21 A. To a degree. To a degree, but--to a degree.</p> <p>22 Q. Okay. Fair enough. Let's--the last--let's</p> <p>23 close out Exhibit 5. The last paragraph, it says,</p> <p>24 "Many patients seek orthopedic care for neck pain</p> <p>25 because" orthopedics--"orthopedists are specifically</p> |
| <p style="text-align: right;">Page 107</p> <p>1 "You know, it's a matter--you know, some people would</p> <p>2 argue it's a mild, it's a mild, it's a mild little</p> <p>3 herniation, but I wouldn't do anything about it."</p> <p>4 Q. Okay, so you--</p> <p>5 A. If you were my--if I saw you as a patient,</p> <p>6 that's what I would tell you.</p> <p>7 Q. So you would tell me I have a mild</p> <p>8 herniation.</p> <p>9 A. If--I would say because you--yeah, I would</p> <p>10 say because of that bulge, some people could use the</p> <p>11 semantics of calling it a small herniation.</p> <p>12 Q. All right. Now, then I would say, "Well,</p> <p>13 what's the extent of the herniation?"</p> <p>14 A. Well, I would want to examine you.</p> <p>15 Q. Okay, you examine me, and can you tell the</p> <p>16 extent of the herniation by that physical examination?</p> <p>17 A. Yes.</p> <p>18 Q. And how do you do that?</p> <p>19 A. You, by--you do that by checking someone's</p> <p>20 reflexes, because you know, if you've got this level</p> <p>21 of the disc there, you know what nerves come out at</p> <p>22 those levels, what nerves are affected by that disc,</p> <p>23 so--and you, so you, you check their--you check their</p> <p>24 muscle strength, their reflexes, their sensation over</p> <p>25 that nerve root distribution, and--</p> | <p style="text-align: right;">Page 109</p> <p>1 trained to diagnose, treat, and prevent problems</p> <p>2 involving the muscles, bones, joints, ligaments and</p> <p>3 tendons." You see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you agree with that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Let me hand you Petkovich--Petkovich</p> <p>8 Exhibit 6, which, for the record, is another</p> <p>9 publication from the American Association (sic) of</p> <p>10 Orthopedic Surgeons; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And this deals with cervical radiculopathy.</p> <p>13 What is cervical radiculopathy?</p> <p>14 A. So this is a publication from the American</p> <p>15 Academy of Orthopedic Surgeons.</p> <p>16 Q. I'm sorry, I must have mispro--</p> <p>17 A. Anyway, so what--what radiculopathy means is</p> <p>18 when a nerve root is being irritated, pinched,</p> <p>19 irritated, any nerve throughout your body, when it</p> <p>20 comes out of the spinal, spinal cord, the nerve is</p> <p>21 being pinched, be it pinched by a--by a discogenic</p> <p>22 condition, could be pinched by some stenosis,</p> <p>23 narrowing of the canal, could be pinched, pinched by a</p> <p>24 number of factors, so that's what radiculopathy is.</p> <p>25 Q. Can you tell somebody has a pinched nerve by</p>                                                                                                                                                                    |

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| <p style="text-align: right;">Page 110</p> <p>1 an x-ray?</p> <p>2 A. You cannot tell specifically a pinched nerve</p> <p>3 by an x-ray.</p> <p>4 Q. Well, what would you do, what kind of test</p> <p>5 would tell you if a pinched nerve exists? What kind</p> <p>6 of test, diagnostic test?</p> <p>7 A. You would take a history of the</p> <p>8 individual,--</p> <p>9 Q. Mm-hmm?</p> <p>10 A. --and then you would do a physical</p> <p>11 examination as I stated,--</p> <p>12 Q. Okay.</p> <p>13 A. --and depending upon the results of that</p> <p>14 physical examination, then you may do further</p> <p>15 diagnostic evaluation if indicated.</p> <p>16 Q. What kind of further diagnostic evaluation?</p> <p>17 A. Well, if you have, if you have, you know,</p> <p>18 subjective complaints and physical findings consistent</p> <p>19 with radiculopathy, then you would get--now, if we're</p> <p>20 talking about, if we're talking about upper extremity</p> <p>21 radiculopathy, i.e., the arms, you would look backward</p> <p>22 into--you'd see if it's coming from the cervical area,</p> <p>23 so you get an MRI of the cervical spine, then you</p> <p>24 might also get electrodiagnostic studies at the upper</p> <p>25 extremity, like a myogram. That's a nerve conduction</p> | <p style="text-align: right;">Page 112</p> <p>1 A. Yes.</p> <p>2 Q. All right, it says, "This puts pressure on</p> <p>3 the nerve." Right?</p> <p>4 A. Yes.</p> <p>5 Q. And that's accurate; correct?</p> <p>6 A. Yes.</p> <p>7 Q. It says, "Spinal nerves are very sensitive</p> <p>8 to even slight amounts of pressure, which can result</p> <p>9 in pain, numbness, or weakness in one or both legs,"</p> <p>10 correct?</p> <p>11 A. Yes. That's what this says. Now, this</p> <p>12 is--it says, "legs" here because this is referring to</p> <p>13 the lumbar spine, but it's the same with the cervical</p> <p>14 spine.</p> <p>15 Q. Right, so it could be pain in one or both</p> <p>16 legs, weakness or numbness in one or both legs, or--is</p> <p>17 that accurate? You agree with that?</p> <p>18 A. Yes, that's--yes.</p> <p>19 Q. All right. I'm going to go down to--on the</p> <p>20 third page, it talks about--under the doctor's</p> <p>21 examination, it says, "To help confirm a diagnosis of</p> <p>22 a herniated disc, your doctor may recommend an MRI, or</p> <p>23 magnetic resonance imaging MRI scan. This test can</p> <p>24 create clear images of soft tissue like intervertebral</p> <p>25 discs," correct?</p> |
| <p style="text-align: right;">Page 111</p> <p>1 velocity study, so those would all be part of a</p> <p>2 further diagnostic evaluation if indicated.</p> <p>3 Q. If indicated; okay.</p> <p>4 Let me hand you Petkovich Deposition Exhibit</p> <p>5 7, and that's another publication from the AAOS? Is</p> <p>6 that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And this deals with herniated disc; is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. With respect to the treatment of a herniated</p> <p>12 disc, is surgery one of those options that could help</p> <p>13 with a herniated disc?</p> <p>14 A. If someone fails to respond to conservative</p> <p>15 management and--and has a true disc herniation with</p> <p>16 consistent physical findings, then surgery is an</p> <p>17 option, yes.</p> <p>18 Q. All right, on the second page, "Cause," it</p> <p>19 says, "A disc herniates or ruptures when part of the</p> <p>20 center nucleus pushes through the outer edge of the</p> <p>21 disc and back toward the spinal canal." Do you see</p> <p>22 that?</p> <p>23 A. Yes.</p> <p>24 Q. And that's what you talked about earlier;</p> <p>25 correct?</p>                                                                                                                            | <p style="text-align: right;">Page 113</p> <p>1 A. Yes.</p> <p>2 Q. And that's what you talked about earlier,</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. The soft tissue distinction, right?</p> <p>6 A. Yes.</p> <p>7 Q. All right, and then on the last page, it</p> <p>8 says, "Surgical Treatment." It says, "Only a small</p> <p>9 percentage of patients with disc herniations require</p> <p>10 surgery." You agree with that, right?</p> <p>11 A. Yes.</p> <p>12 Q. It says, "Spine surgery is typically</p> <p>13 recommended only after a period of nonsurgical</p> <p>14 treatment has not relieved painful symptoms." Do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. And you agree with that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Let me hand you what's been marked as</p> <p>20 Petkovich Deposition Exhibit 8, and that is another</p> <p>21 publication from the American--I'm sorry, from the</p> <p>22 AAOS, dealing with cervical spondylosis, or arthritis</p> <p>23 of the spine. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And does Mr. Ronald Burt have cervical</p>                                                                                                                                      |

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| <p style="text-align: right;">Page 114</p> <p>1 spondylosis?</p> <p>2 A. He does have very mild spondylosis at the</p> <p>3 C4-5 level.</p> <p>4 Q. Okay, and on--if you go to the fourth page,</p> <p>5 it talks about physical therapy. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. It says, "Physical therapy is usually the</p> <p>8 first nonsurgical treatment that your doctor will</p> <p>9 recommend." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you agree with that?</p> <p>12 A. Yes. I agree with that if someone is</p> <p>13 symptomatic.</p> <p>14 Q. Of cervical spondylosis?</p> <p>15 A. Yes. If someone has--if someone has</p> <p>16 cervical spondylosis and their history and physical</p> <p>17 examination are significant, then I believe that</p> <p>18 physical therapy at that time is--is important, can be</p> <p>19 important.</p> <p>20 Q. Okay. Well, this says, "Physical therapy is</p> <p>21 usually the first nonsurgical treatment that your</p> <p>22 doctor will recommend," and it is your opinion that</p> <p>23 they would only recommend it based on the severity of</p> <p>24 the cervical spondylosis. Is that your testimony?</p> <p>25 A. It is, and that's--that's the whole point of</p> | <p style="text-align: right;">Page 116</p> <p>1 So those are the cases where surgery may be</p> <p>2 recommended; correct?</p> <p>3 A. Yes.</p> <p>4 Q. All right. All right, it also says, if you</p> <p>5 look at the last paragraph, "Surgery may also be</p> <p>6 recommended if you have severe pain that has not been</p> <p>7 relieved by nonsurgical treatment." Right?</p> <p>8 A. Yes.</p> <p>9 Q. And you agree with that, right?</p> <p>10 A. Yes.</p> <p>11 Q. Let me hand you what's been marked as</p> <p>12 Petrovich Deposition Exhibit 9 and ask you if you</p> <p>13 can--well, for the record, this is another publication</p> <p>14 from the AAOS? Is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. And this deals with lumbar spinal stenosis.</p> <p>17 A. Yes.</p> <p>18 Q. And to your knowledge, does Mr. Burt have</p> <p>19 lumbar spinal stenosis?</p> <p>20 A. No.</p> <p>21 Q. What is lumbar spinal stenosis?</p> <p>22 A. "Stenosis" means narrowing. Lumbar spinal</p> <p>23 or spinal stenosis means narrowing of the spinal</p> <p>24 canal, period, so--</p> <p>25 Q. Can you determine that from an x-ray?</p>                                                                                                                                                                                                    |
| <p style="text-align: right;">Page 115</p> <p>1 this, this article you are showing.</p> <p>2 Q. Well, I mean there's a whole list of</p> <p>3 treatments listed, possible treatments listed under</p> <p>4 that section. Is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And that list includes nonsurgical</p> <p>7 treatments; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And those include physical therapy,</p> <p>10 medications, soft cervical collar, ice, heat, and</p> <p>11 other modalities, steroid-based injections, those are</p> <p>12 listed under nonsurgical treatments; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And then there's a section for surgical</p> <p>15 treatments; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And under surgical treatment, it says,</p> <p>18 "Surgery is commonly recommended for cervical</p> <p>19 spondylosis and neck pain unless your doctor</p> <p>20 determines, number 1, a spinal nerve is being pinched</p> <p>21 by a herniated disc or bone, cervical radiculopathy,</p> <p>22 or your spinal cord is being compressed, cervical</p> <p>23 spondylitic myopathy" (sic).</p> <p>24 A. Myelopathy.</p> <p>25 Q. Myelopathy; thank you, sir.</p>                                                       | <p style="text-align: right;">Page 117</p> <p>1 A. You can get an idea of it, you can get an</p> <p>2 idea of it, and then that, in conjunction with a</p> <p>3 history and physical examination, would further--would</p> <p>4 further--could further possibly confirm that.</p> <p>5 Q. How do you get an idea of it from an x-ray?</p> <p>6 A. You will see, you will see with significant</p> <p>7 degenerative disc changes, you will then see</p> <p>8 degenerative facet joint changes which he talks about</p> <p>9 posteriorly. You might start to see some what is</p> <p>10 called foraminal narrowing, some narrowing of those</p> <p>11 little foramen where the nerves come out of, so that's</p> <p>12 all going to be significant.</p> <p>13 Q. You can see all that on an x-ray?</p> <p>14 A. On plain x-rays you can, yes. On plain</p> <p>15 x-rays, you can see all of that.</p> <p>16 Q. Okay.</p> <p>17 A. Okay, so that's--that's bone. We're talking</p> <p>18 about you can see degenerative disc changes, you can</p> <p>19 see degenerative changes in the facet joints, those</p> <p>20 joints posterior, in--</p> <p>21 Q. Correct.</p> <p>22 A. --the back of the spine.</p> <p>23 Q. Right.</p> <p>24 A. And then on the oblique view, you can see</p> <p>25 some narrowing of the, of the neural foramen where the</p> |

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| <p style="text-align: right;">Page 118</p> <p>1 nerves come out, so you can see all that on plain<br/>2 x-rays, and then if it's clinically indicated, if<br/>3 somebody's history and physical exam indicates,<br/>4 indicates it, then you would need to do further<br/>5 evaluation.<br/>6 Q. Well, we see degenerative disc change with<br/>7 Mr. Burt; correct?<br/>8 A. You see--you see very mild degenerative disc<br/>9 changes--<br/>10 Q. Right.<br/>11 A. And you don't see anything else, though.<br/>12 Q. Nothing else that would indicate to you that<br/>13 he has lumbar spinal stenosis?<br/>14 A. Now, we're talking about a lumbar, as<br/>15 opposed to cervical now? Is that right?<br/>16 Q. Well, I'm talking about lumbar spinal<br/>17 stenosis, which is--<br/>18 A. It's the same--it's the same thing. There's<br/>19 cervical spinal stenosis, too, so stenosis just means<br/>20 narrowing of the canal, so you can have cervical<br/>21 spinal stenosis, lumbar spinal stenosis, et cetera, so<br/>22 in Mr. Burt's case, he's got some degenerative changes<br/>23 at the L5-S1 level,--<br/>24 Q. Right.<br/>25 A. --but there are no other radiographic</p> | <p style="text-align: right;">Page 120</p> <p>1 per se, on the x-rays, but you could see the<br/>2 surrounding structures, and what they're talking<br/>3 about, when the ligaments will, will start to<br/>4 hypertrophy, you will typically with that see some<br/>5 bone spurs from forming, and so you can see the bone<br/>6 spurs forming which would indicate that.<br/>7 Q. Okay, but ligaments you can't see on x-ray.<br/>8 Is that correct?<br/>9 A. You cannot see the specific ligaments,<br/>10 themselves, on the x-rays.<br/>11 Q. All right, it says, "This also lessens space<br/>12 for the nerve." Do you see that?<br/>13 A. Yes.<br/>14 Q. And they're talking about the increased size<br/>15 and the ligaments lessening the space for the nerves;<br/>16 is that correct?<br/>17 A. Yes, and that's what I was talking about<br/>18 earlier, is that the--you know, I mentioned the spinal<br/>19 canal, I mentioned the neural foramen where the nerves<br/>20 come out of the spinal canal.<br/>21 Q. Okay, and it says, "Once the space has<br/>22 become small enough to irritate spinal nerve, painful<br/>23 symptoms can result." Is that correct?<br/>24 A. Yes.<br/>25 Q. And this is all happening in the disc joint,</p>                                                                                                                                                                        |
| <p style="text-align: right;">Page 119</p> <p>1 findings to indicate any--to indicate any--any<br/>2 stenosis in his lumbar spine.<br/>3 Q. Okay, and so that would be in the lumbar<br/>4 spine or--I mean in this case, we're talking about<br/>5 lumbar spine, so nothing--<br/>6 A. You mentioned the lumbar spine, but it would<br/>7 be the same thing with the cervical spine.<br/>8 Q. Right.<br/>9 A. I mean, you could have cervical spinal<br/>10 stenosis, but if you have that, you would have other,<br/>11 you would have other--you would have physical findings<br/>12 consistent with that.<br/>13 Q. Okay. All right, go to page 3. It says, at<br/>14 the first top--the top paragraph, it says, "Another<br/>15 response to arthritis in the lower back is that<br/>16 ligaments around the joints increase in size." Do you<br/>17 see that?<br/>18 A. Okay, where are you reading from, sir?<br/>19 Q. The top paragraph on page 3.<br/>20 A. Okay.<br/>21 Q. Do you see that?<br/>22 A. Yes.<br/>23 Q. And the ligaments, can you see whether or<br/>24 not ligaments have increased in size on an x-ray?<br/>25 A. You cannot specifically see the ligaments,</p>      | <p style="text-align: right;">Page 121</p> <p>1 or in the joint that contains the disc? Is that where<br/>2 all this is happening?<br/>3 A. It's happening, it's happening--it's<br/>4 happening more than that. It's happening--spinal<br/>5 stenosis means narrowing of the spine.<br/>6 Q. Right.<br/>7 A. That's what it means, so whether it be any<br/>8 portion of the spine, the spine--the canal being<br/>9 narrowed, that's what the word "stenosis" means.<br/>10 Q. So it can be at the disc or the bone level?<br/>11 A. Well, typically--what I said is, it's<br/>12 secondary to the disc. The disc, you get some<br/>13 degeneration, some desiccation; the disc will start to<br/>14 settle. As it starts to settle, off the side of the<br/>15 disc, you have the, the neural foramen there. They<br/>16 will start to settle with it. The facet joints in the<br/>17 back will start to settle a little bit, and that's all<br/>18 part of--that's all part of the degenerative process,<br/>19 and then secondary to that, you will start to<br/>20 typically get some, some extra motion there, you will<br/>21 get some ligamentum, ligamentous hypertrophy which<br/>22 starts to react to that, and putting all that<br/>23 together, then you can get some narrowing, some<br/>24 stenotic changes, and that's all--that's all part of a<br/>25 prolonged, prolonged degenerative, chronic condition,</p> |



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| <p style="text-align: right;">Page 122</p> <p>1 pretty far along.</p> <p>2 Q. Got you. Let me hand you what's been marked</p> <p>3 as Plaintiff's Exhibit 11 in a prior deposition, and</p> <p>4 let's take a look at that. Now, this, Plaintiff's</p> <p>5 Exhibit 11 talks about cervical degenerative disc</p> <p>6 disease. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And in the second paragraph, it says,</p> <p>9 "Nonetheless, a fall or a twisting injury to the disc</p> <p>10 space can spur degeneration, and accumulated wear and</p> <p>11 tear on the disc over time can lead to neck pain</p> <p>12 caused by disc degeneration." Do you agree with that</p> <p>13 statement?</p> <p>14 A. Yes.</p> <p>15 Q. And then the last paragraph on that page, it</p> <p>16 says, "Cervical disc degeneration can also contribute</p> <p>17 to spinal stenosis, more specifically the development</p> <p>18 of cervical stenosis and other progressive conditions,</p> <p>19 as well as a more sudden herniated disc." Do you</p> <p>20 agree with that?</p> <p>21 A. Yes.</p> <p>22 Q. Let me hand you what's what has been</p> <p>23 previously marked in another deposition as Plaintiff's</p> <p>24 Exhibit Number 3 and ask you if you can take a look at</p> <p>25 that for me, and this Plaintiff's Exhibit 3 relates to</p> | <p style="text-align: right;">Page 124</p> <p>1 circumstances after putting everything together that</p> <p>2 I've already talked about.</p> <p>3 Q. Okay, and you go down--skip a paragraph.</p> <p>4 The next paragraph says, "Exercise is best done in a</p> <p>5 controlled, progressive manner and with the help of a</p> <p>6 trained health professional such as a--</p> <p>7 A. Physiatrist.</p> <p>8 Q. --physiatrist, physical therapist, or</p> <p>9 chiropractor."</p> <p>10 A. Yes.</p> <p>11 Q. Correct? Do you agree with that?</p> <p>12 A. No. It's--this is a kind of a blank</p> <p>13 statement here, repeating just what you said. Very</p> <p>14 often, people do exercises on their own. They don't</p> <p>15 need to do exercises necessarily with a--with somebody</p> <p>16 else there. When you instruct people in exercise, I</p> <p>17 think that's what this really means, so somebody is</p> <p>18 instructing exercises, and then people do them on</p> <p>19 their own.</p> <p>20 Q. Okay, so you disagree with that statement?</p> <p>21 A. Well, I think the way you are using the</p> <p>22 statement, you are taking it out of the context.</p> <p>23 Q. Well, no, let me restate this, Doctor.</p> <p>24 A. The statement the way you read it right</p> <p>25 here, I would add, I would add, because you are taking</p> |
| <p style="text-align: right;">Page 123</p> <p>1 or purports to relate to degenerative disc disease</p> <p>2 treatment guidelines. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And the first paragraph says, "The goals for</p> <p>5 treatment of degenerative disc disease usually include</p> <p>6 a combination of three areas; pain control, exercise,</p> <p>7 and rehabilitation." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you agree with that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Number two, "Exercise and</p> <p>12 Rehabilitation," it says, "The goals of exercise are</p> <p>13 both to help the back heal and to prevent or reduce</p> <p>14 further reoccurrences of pain." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you agree with that?</p> <p>17 A. Yes.</p> <p>18 Q. "For people with symptomatic degenerative</p> <p>19 disc disease, exercises are usually best done under</p> <p>20 the guidance of a physical therapist or other</p> <p>21 appropriately trained healthcare professional." Do</p> <p>22 you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you agree with that?</p> <p>25 A. I agree with that, again under appropriate</p>                                                                                                                                                            | <p style="text-align: right;">Page 125</p> <p>1 it out of context, this statement--</p> <p>2 Q. Well, let me say this, Doctor. I'm</p> <p>3 reading--</p> <p>4 MR. DUGAN: Let him finish his answer.</p> <p>5 MR. NORWOOD: Well, let me defend what he's</p> <p>6 saying. He's attacking me and saying I'm taking it</p> <p>7 out of context.</p> <p>8 BY MR. NORWOOD:</p> <p>9 Q. I'm just reading from a statement, and I'm</p> <p>10 just asking you if you agree or disagree with it. I'm</p> <p>11 not saying anything, I'm not--</p> <p>12 MR. DUGAN: And he's answering your question</p> <p>13 and you are cutting--</p> <p>14 MR. NORWOOD: Well--</p> <p>15 --MR. DUGAN: --him off.</p> <p>16 MR. NORWOOD: Well, no, he's saying I'm</p> <p>17 taking it out of context.</p> <p>18 BY MR. NORWOOD:</p> <p>19 Q. I'm trying to just ask you the simple</p> <p>20 question of do you disagree with the statement or not.</p> <p>21 If you don't agree with the statement, that's fine,</p> <p>22 too. That's all I want to know.</p> <p>23 A. I, I--sir, I agree with, I agree with that</p> <p>24 statement, taken in context with what this piece of</p> <p>25 paper is trying to get to.</p>                                                                                                                                                         |

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| <p style="text-align: right;">Page 126</p> <p>1 Q. Okay, so you agree with it in the context of<br/>2 how it's iterated here?<br/>3 A. Yes.<br/>4 Q. Okay, fair enough.<br/>5 Let me hand you what has previously been<br/>6 marked as Plaintiff's Exhibit 4 and ask you to take a<br/>7 look at that one, and this one deals with cervical<br/>8 disc pathology and artificial disc surgery, and let<br/>9 me--if you go to the second paragraph, right under the<br/>10 photo, it says, "Fortunately, many of these changes<br/>11 seen on x-ray images can be considered a general aging<br/>12 phenomenon and not pathological (problematic), as many<br/>13 people with degenerative changes do not have any pain<br/>14 or other symptoms." Do you agree with that?<br/>15 A. Yes.<br/>16 Q. All right, so that I could be sitting here<br/>17 with degenerative disc changes, and I probably am at<br/>18 57, but I'm not experiencing any pain, and that would<br/>19 be what they're talking about here, correct?<br/>20 A. That's exactly what they're--that's exactly<br/>21 what they're talking about, and I'm sure you do have<br/>22 some degenerative disc changes.<br/>23 Q. Okay.<br/>24 A. As I do, also.<br/>25 Q. Okay, and as you indicated before, that's</p> | <p style="text-align: right;">Page 128</p> <p>1 MR. NORWOOD: You'll have to deal with that.<br/>2 BY MR. NORWOOD:<br/>3 Q. (Continuing) First of all, have you seen<br/>4 this document before?<br/>5 A. Not--no, not that I recall.<br/>6 Q. Are you familiar with the Spinal Cord Tumor<br/>7 Association, Inc.? Does that ring a bell?<br/>8 A. Yes.<br/>9 Q. What is that?<br/>10 A. That's a--some type of a--well, maybe I'm<br/>11 not familiar with it. It's some type of a--obviously,<br/>12 some type of a spinal cord tumor--looks like a<br/>13 registry, but I don't know that I've ever seen this<br/>14 before.<br/>15 Q. Okay.<br/>16 A. I don't think I've ever seen this name<br/>17 before.<br/>18 Q. Okay, it talks about Tony M.'s story, and<br/>19 that story is of a 35-year-old individual with some<br/>20 condition. Help me out with this type. What is that?<br/>21 Intra--<br/>22 A. Intramedullary ependymoma.<br/>23 Q. What is that?<br/>24 A. That's just a--it's a type of a tumor. It's<br/>25 a spinal cord tumor.</p>                                                                                                                                                                                                                       |
| <p style="text-align: right;">Page 127</p> <p>1 part of the natural aging process.<br/>2 A. Yes.<br/>3 Q. All right, and then it goes further and<br/>4 says, "However, in some patients, the disc<br/>5 degeneration can result in a herniation of the disc<br/>6 and osteophyte bone spur formation." Do you agree<br/>7 with that?<br/>8 A. Yes.<br/>9 Q. All right, and on the next page, it talks<br/>10 about when neck surgery may be considered. It says,<br/>11 "Most instances of pain and other symptoms from<br/>12 cervical degenerative disc disease and/or a cervical<br/>13 disc herniation will resolve on their own and not<br/>14 require any type of interventional treatment." You<br/>15 agree with that, right?<br/>16 A. Yes.<br/>17 Q. But you also agree that there are other<br/>18 occasions where surgery might be necessary, depending<br/>19 on the circumstances; correct?<br/>20 A. Yes.<br/>21 Q. All right. Let me hand you what is marked<br/>22 as Petkovich Deposition Exhibit 10. I don't know if I<br/>23 have that in your pack or not. I think I got all the<br/>24 copies here. Let me see. I just have one extra copy.<br/>25 MR. DUGAN: Thank you.</p>                                                                                  | <p style="text-align: right;">Page 129</p> <p>1 Q. And just reading from this exhibit, it says,<br/>2 "Hi. My name is Tony M. from St. Louis. I was<br/>3 diagnosed with intermedullary spinal cord tumor from<br/>4 C3 to C7 on April 17, 2007," and for your purposes,<br/>5 let me skip through it, and it talks about, and if you<br/>6 look on the second page, the third full paragraph,<br/>7 this patient says, "My next step was to call a<br/>8 specialist. I contacted Dr. Frank Petkovich in<br/>9 St. Louis, an orthopedic surgeon dealing with the<br/>10 spine. He ordered more x-rays but from more angles.<br/>11 When Dr. Petkovich examined the x-rays, he could not<br/>12 see anything the matter with the vertebrae in my<br/>13 cervical area. He then ordered an MRI and prescribed<br/>14 PT." Do you see that?<br/>15 A. Yes.<br/>16 Q. Do you recall this particular case?<br/>17 A. Let me read it. Let me read it.<br/>18 Q. Yeah, go right ahead.<br/>19 (Witness peruses said document.)<br/>20 A. I might remember it. These are rare tumors.<br/>21 I may remember it.<br/>22 Q. Okay.<br/>23 A. I think I do, actually.<br/>24 Q. And just to kind of cut to the chase on this<br/>25 one, it appears this is a situation where this patient</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 was--had various complaints which included pain that<br/>2 suggested to him maybe he had a bulging disc or<br/>3 something and then it turned out that he, in fact, had<br/>4 some type of tumor in his spine?<br/>5 MR. DUGAN: I'm going to object to the<br/>6 question to the extent that it calls for the<br/>7 disclosure of another patient's medical information<br/>8 which is private, beyond what's contained in your<br/>9 exhibit here.<br/>10 MR. NORWOOD: Well, and just for the record,<br/>11 this is Tony M., whoever that might be, and I'm not<br/>12 asking him to identify that patient, and this<br/>13 particular document is from a public website.<br/>14 MR. DUGAN: I understand. To the extent<br/>15 that the patient's history is included in the website,<br/>16 that's fine if you want to ask him questions about<br/>17 that, but asking him to disclose information as to<br/>18 what he might remember about Tony M. beyond what's in<br/>19 that is privileged information under the--<br/>20 MR. NORWOOD: I'm not asking him to remember<br/>21 anything beyond what's in here.<br/>22 MR. BOOSE: I join by our side.<br/>23 BY MR. NORWOOD:<br/>24 Q. Do you remember parts of what's referenced<br/>25 in here?</p> | <p style="text-align: right;">Page 132</p> <p>1 MRI on an x-ray screen and it showed a mass growing<br/>2 inside his spinal cord from C3 to C7.<br/>3 MR. BOOSE: At this point, I don't have it<br/>4 in front of me, but I do raise the previous objections<br/>5 raised by Mr. Dugan.<br/>6 MR. DUGAN: Join.<br/>7 BY MR. NORWOOD:<br/>8 Q. (Continuing) Subject to that, that's what<br/>9 this shows, right?<br/>10 A. Well, again, I haven't--this is ten years<br/>11 ago, and I have this piece of paper in front of me.<br/>12 I'm scanning through this.<br/>13 Q. Right. Right.<br/>14 A. As I recall, this man shows up in my office<br/>15 and, you know, he had some bizarre history.<br/>16 Obviously, there was something going on.<br/>17 Q. Right. Well, my only point--and I'm going<br/>18 to make it easy--this tumor, you couldn't see it on an<br/>19 x-ray, for whatever reason.<br/>20 A. You could not see it on plain x-rays.<br/>21 Q. And you had to get an MRI in order to find<br/>22 out exactly--well, to find out that he had a tumor,<br/>23 right?<br/>24 A. Yes.<br/>25 MR. NORWOOD: Okay. Well, I have no further</p> |
| <p style="text-align: right;">Page 131</p> <p>1 A. Yeah, I do. This is--this is 2007.<br/>2 Q. Right. I understand.<br/>3 A. This is April 2007.<br/>4 Q. Right.<br/>5 A. This is the first time I've--you are showing<br/>6 this to me today.<br/>7 Q. Right.<br/>8 A. I actually do remember this,--<br/>9 Q. Okay.<br/>10 A. --because this is a--I remember this<br/>11 individual. This is a very rare thing.<br/>12 Q. Right, but the only point I'm making is that<br/>13 you couldn't find this in an x-ray, this particular<br/>14 tumor.<br/>15 A. No. You don't see it on x-ray, but I<br/>16 actually remember--you asked me--I remember this guy.<br/>17 He had--I mean, it was very obvious that there was<br/>18 something going on.<br/>19 Q. Okay. Right, but my only point is, the<br/>20 x-ray didn't show what was going on.<br/>21 A. No, the plain x-rays, the plain x-rays<br/>22 didn't show what was going on, and--<br/>23 Q. And you had to have an MRI, and then based<br/>24 on the MRI, that's when you advised him, according to<br/>25 this, that--well, it says you put the results of the</p>                                                                                                                                                                            | <p style="text-align: right;">Page 133</p> <p>1 questions at this time.<br/>2 EXAMINATION<br/>3 QUESTIONS BY MR. DUGAN:<br/>4 Q. I have a couple. Doctor, you have reviewed<br/>5 the medical records on Mr. Burt that we provided to<br/>6 you, have you not?<br/>7 A. Yes.<br/>8 Q. And you have reviewed at least certain of<br/>9 the x-ray films of his neck and lower back, right?<br/>10 A. Yes.<br/>11 Q. And that would include--I think we indicated<br/>12 before, you were unable to find the 1996, right?<br/>13 A. Yes.<br/>14 Q. But you do have, I think, some 2012's and<br/>15 13's?<br/>16 A. Yes.<br/>17 Q. Doctor, in your opinion, is an MRI or CT<br/>18 scan indicated for Mr. Burt?<br/>19 A. No.<br/>20 Q. Why?<br/>21 A. There are no--there are no--there are no<br/>22 physical examination findings and no objective<br/>23 physical findings to indicate further evaluation of a<br/>24 CT or MRI, and his subjective complaints are not<br/>25 consistent with any indications for further evaluation</p>                                                                                                                  |

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| <p style="text-align: right;">Page 134</p> <p>1 with a CT or MRI.</p> <p>2 Q. Are there any risks associated with those</p> <p>3 studies, CT in particular?</p> <p>4 A. Well, CT puts out a lot of radiation, so</p> <p>5 that's--an MRI does not, but a CT puts out a lot of</p> <p>6 radiation.</p> <p>7 Q. Doctor, during the period of time Mr. Burt</p> <p>8 was under the care of Dr. Nwaobasi and Dr. Trost, do</p> <p>9 you believe he was a candidate for narcotic pain</p> <p>10 medications?</p> <p>11 A. No.</p> <p>12 Q. Why not?</p> <p>13 A. I think that his pain was not severe enough.</p> <p>14 I would have treated him with a--as I stated earlier,</p> <p>15 with a mild over-the-counter antiinflammatory</p> <p>16 medication, and I would have increased the dose if I</p> <p>17 had to.</p> <p>18 Q. In your opinion, Doctor, is Mr. Burt a</p> <p>19 candidate for surgery?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. In this case, we're talking about his</p> <p>23 cervical spine and his lumbar spine. He's got only</p> <p>24 some mild degenerative changes with no objective</p> <p>25 physical findings to show any type of neurologic</p>                                                                                                               | <p style="text-align: right;">Page 136</p> <p>1 looking at radiographic studies, and in recent years,</p> <p>2 radiologists have coned down, becoming more specified</p> <p>3 in certain areas, but what I'm trying to say, my point</p> <p>4 is that I think that most orthopedic surgeons are more</p> <p>5 adept at reading musculoskeletal films than the</p> <p>6 average radiologist, and I would say that most spine</p> <p>7 surgeons are most--are more adept at reading spine</p> <p>8 radiographic studies than general radiologists,</p> <p>9 period, and that's not to criticize radiologists,</p> <p>10 that's just the way, the way the advance of</p> <p>11 technology, the advance of knowledge, et cetera, et</p> <p>12 cetera, I think most radiologists would agree with</p> <p>13 that, too.</p> <p>14 Q. Doctor, there was some talk earlier about</p> <p>15 the concept of scoliosis, and we just established that</p> <p>16 you looked at the 2012 and '13 spinal films. When you</p> <p>17 looked at those, did you see any evidence of scoliosis</p> <p>18 on those films?</p> <p>19 A. No.</p> <p>20 Q. Does scoliosis, if left untreated, correct</p> <p>21 itself with the passage of time?</p> <p>22 A. No.</p> <p>23 Q. If Mr. Burt had had scoliosis in 1996 as</p> <p>24 that radiology report suggests, would you have seen</p> <p>25 that on the 2012 and 2013 films that you looked at?</p> |
| <p style="text-align: right;">Page 135</p> <p>1 deficit or anything, so there are no indications for</p> <p>2 any type of surgical intervention.</p> <p>3 Q. Doctor, we talked earlier about the concept</p> <p>4 of arthritis, and you defined it for us. If arthritis</p> <p>5 progresses to a state that it is sufficiently severe,</p> <p>6 can you see that on a plain film x-ray?</p> <p>7 A. Yes.</p> <p>8 Q. Would that include the x-rays of the back</p> <p>9 and neck?</p> <p>10 A. Yes.</p> <p>11 Q. Talking about films, we established before</p> <p>12 that you are not a radiologist, right?</p> <p>13 A. That is correct.</p> <p>14 Q. But as part of your practice as an</p> <p>15 orthopedic surgeon, do you regularly review and</p> <p>16 interpret plain films?</p> <p>17 A. I regularly review plain films commonly, all</p> <p>18 the time. That's part of any orthopedic surgeon's</p> <p>19 training, is reviewing, reviewing radiographic</p> <p>20 studies, plain x-rays, et cetera, CT's, MRI's.</p> <p>21 I would go further to state that probably</p> <p>22 most--let me step back.</p> <p>23 Radiology is a specialty of medicine where--</p> <p>24 for the interpretation of radiographic studies.</p> <p>25 Radiologists are trained to do a broad spectrum of</p> | <p style="text-align: right;">Page 137</p> <p>1 A. Yes.</p> <p>2 Q. And you didn't see any scoliosis, right?</p> <p>3 A. There was no--there was no evidence on those</p> <p>4 latter films. He did not have scoliosis.</p> <p>5 Q. Doctor, there was some talk earlier about</p> <p>6 numbness and tingling possibly being a symptom of a</p> <p>7 spinal problem among many other things. Do you recall</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. You have reviewed Mr. Burt's medical</p> <p>11 records?</p> <p>12 A. Yes.</p> <p>13 Q. Was numbness and tingling a recurring or</p> <p>14 persistent theme within his medical records?</p> <p>15 A. No.</p> <p>16 Q. If it had been a recurrent or persistent</p> <p>17 theme, how would that have impacted your opinions</p> <p>18 here, today?</p> <p>19 A. If he--if an individual, in this case</p> <p>20 Mr. Burt, had persistent, subjective complaints with</p> <p>21 regard to numbness and tingling and had objective</p> <p>22 physical findings to substantiate that, then I would</p> <p>23 work that up further with the tests we talked about</p> <p>24 earlier.</p> <p>25 Q. And I think my last question, Doctor--and we</p>                                                                                                                                                                                                                             |


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| <p style="text-align: right;">Page 138</p> <p>1 touched on this in some of the literature that you</p> <p>2 looked at--are there risks to the patient associated</p> <p>3 with spinal surgery?</p> <p>4 A. Yes.</p> <p>5 Q. What are those risks?</p> <p>6 A. There are a lot of risks. Like any, the</p> <p>7 risk of any, the risks of any surgical procedure are</p> <p>8 obviously anesthesia risk, infection, and then going</p> <p>9 beyond that, as far as spinal surgery, the anesthesia</p> <p>10 risk, infection, there is neurologic compromise, there</p> <p>11 is possible paralysis, possible death.</p> <p>12 Q. In the context of back problems, is running</p> <p>13 to the surgeon to have a surgical procedure the first-</p> <p>14 line option for patients?</p> <p>15 A. No.</p> <p>16 Q. Where in the spectrum of treatments or</p> <p>17 therapies does surgery fall for back patients?</p> <p>18 A. It's generally the last-line option.</p> <p>19 Q. For the reasons you just described?</p> <p>20 A. Yes.</p> <p>21 MR. DUGAN: That's all the questions I have</p> <p>22 for you, Doctor. Thank you.</p> <p>23 MR. NORWOOD: Let me have some--I have a few</p> <p>24 follow-up--</p> <p>25 MR. BOOSE: If I can have a chance to--</p> | <p style="text-align: right;">Page 140</p> <p>1 believe you stated you don't consider that as</p> <p>2 specifically defined in the medical context. Is that</p> <p>3 fair to say?</p> <p>4 A. Well, I'm not--I'm not sure how to answer</p> <p>5 that question. I mean "chronic," "chronic" means</p> <p>6 longstanding.</p> <p>7 Q. But specifically when asked about a specific</p> <p>8 time frame for that,--</p> <p>9 A. Yes.</p> <p>10 Q. --that isn't really established as a term of</p> <p>11 art. Is that correct or incorrect?</p> <p>12 A. No, you are correct. I said that I can't</p> <p>13 give you a specific time defining it, period.</p> <p>14 Q. So similarly to "absolute necessity" and</p> <p>15 policies related to the use of that term, are you</p> <p>16 aware of that term being used medically or triggering</p> <p>17 certain policies or procedures medically? I'm</p> <p>18 referring to "chronic" now.</p> <p>19 A. Okay, I don't understand your question.</p> <p>20 Q. I can try to fix it. You said the term</p> <p>21 "absolute necessity," you are not aware of policies</p> <p>22 that relate to that term, so if somebody says</p> <p>23 "absolute necessity" at some point, that doesn't</p> <p>24 immediately bring to mind that you need to do X, Y, or</p> <p>25 Z medically, right?</p> |
| <p style="text-align: right;">Page 139</p> <p>1 MR. NORWOOD: I'm sorry, go ahead. I keep</p> <p>2 forgetting about you. I'm sorry.</p> <p>3 MR. BOOSE: It's easy enough.</p> <p>4 MR. NORWOOD: You are important.</p> <p>5 MR. BOOSE: Thank you.</p> <p>6 MR. NORWOOD: Gone but not forgotten.</p> <p>7 EXAMINATION</p> <p>8 QUESTIONS BY MR. BOOSE:</p> <p>9 Q. Dr. Petkovich, you mentioned that you would,</p> <p>10 given what you reviewed, you would treat with</p> <p>11 over-the-counter antiinflammatory medications;</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. Given the documents you've been provided</p> <p>15 today at the deposition, does the review of those</p> <p>16 documents change your attitude as far as the course of</p> <p>17 treatment?</p> <p>18 A. No.</p> <p>19 Q. You also mentioned you are not familiar with</p> <p>20 the term, "absolute necessity," or policies relating</p> <p>21 to the use of that term. Do you remember talking</p> <p>22 about that?</p> <p>23 A. Yes.</p> <p>24 Q. Similarly to that, you also talked about the</p> <p>25 term "chronic," and pardon me if I'm wrong, but I</p>                                                                                                              | <p style="text-align: right;">Page 141</p> <p>1 A. That's correct.</p> <p>2 Q. Would that be the same or different in terms</p> <p>3 of the term "chronic"?</p> <p>4 A. Well, "chronic" means to me something that's</p> <p>5 been going on for a period of time.</p> <p>6 MR. BOOSE: Okay, that's--that's all the</p> <p>7 questions I have.</p> <p>8 FURTHER EXAMINATION</p> <p>9 BY MR. NORWOOD:</p> <p>10 Q. Okay, I just have a few follow-up questions.</p> <p>11 So--so we talked about this, but in your opinion,</p> <p>12 there's no scoliosis, and part of that opinion is</p> <p>13 based on the fact that regardless of whatever the</p> <p>14 radiologists were looking at in 1996, that wouldn't</p> <p>15 have changed or cured itself by the time x-rays were</p> <p>16 taken in 2012 and 2013; is that correct?</p> <p>17 A. What I'm saying is that if this--if someone</p> <p>18 had scoliosis in 1996, okay, scoliosis, if you have</p> <p>19 true scoliosis, it's not going to go away.</p> <p>20 Q. Right.</p> <p>21 A. It would have been present on the latter</p> <p>22 x-rays.</p> <p>23 Q. So that means the same radiologist who</p> <p>24 looked at the x-rays in '96 could have looked at those</p> <p>25 same 2013 x-rays and determined the same thing, that</p>                                    |



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| <p style="text-align: right;">Page 142</p> <p>1 in his opinion, there was some form of scoliosis;<br/>2 correct?<br/>3 MR. DUGAN: Form, foundation.<br/>4 A. Well, I can't speak for that radiologist. I<br/>5 looked at the x-rays, I looked at the latter x-rays,<br/>6 and this man does not have scoliosis.<br/>7 BY MR. NORWOOD:<br/>8 Q. But you didn't look at the '96 x-rays.<br/>9 A. Well, no, I didn't. I didn't look at the<br/>10 '96 x-rays, as I testified to earlier, I think,--<br/>11 Q. Right.<br/>12 A. --but I looked at the latter x-rays, and he<br/>13 does not have scoliosis.<br/>14 Q. In your opinion.<br/>15 A. Well, it's obviously my opinion. I've<br/>16 stated that,--<br/>17 Q. Right. That's what I'm saying.<br/>18 A. --but I'm positive that's the case.<br/>19 Q. And I'm--I suggest do you think that the<br/>20 doctor who looked at the '96 x-rays was less positive<br/>21 when he rendered his assessment about scoliosis?<br/>22 MR. DUGAN: Foundation.<br/>23 A. I don't have any idea who that radiologist,<br/>24 who that person is. That could be some radiologist<br/>25 that was working on the weekends that looks at MRI's</p> | <p style="text-align: right;">Page 144</p> <p>1 radiographic studies.<br/>2 Q. And the radiographic studies, so that all<br/>3 assumes that those medical records are accurate.<br/>4 A. Yes.<br/>5 Q. All right, and we've already determined that<br/>6 at least in certain cases, there are repeated<br/>7 references to scoliosis in those medical records,<br/>8 right?<br/>9 A. Well, I think there's really only one<br/>10 reference is that radiology report you are talking<br/>11 about, and I think somebody along the line keeps<br/>12 dragging that through there, but I think there's<br/>13 really only one reference to it.<br/>14 Q. Well, there's only one radiological<br/>15 reference, but the records, themselves, are replete<br/>16 with references to scoliosis. You agree with that,<br/>17 right?<br/>18 A. Well, I--I think what I said, I don't think<br/>19 it's really--I don't think--I think, I think it<br/>20 started what you mentioned in 1996--<br/>21 Q. Right.<br/>22 A. --and kind of carried on there,--<br/>23 Q. Right.<br/>24 A. --but I don't think anybody has really taken<br/>25 it apart.</p> |
| <p style="text-align: right;">Page 143</p> <p>1 all day long and never--or--I have no idea who that<br/>2 is.<br/>3 BY MR. NORWOOD:<br/>4 Q. Or it could have been someone who graduated<br/>5 from Harvard Medical School and also--<br/>6 A. I have no--I don't have any idea.<br/>7 MR. DUGAN: Foundation.<br/>8 MR. BOOSE: Foundation.<br/>9 MR. NORWOOD: Fair enough. Okay.<br/>10 One second. One, one minute. We're--I<br/>11 think we've got three, maybe four minutes left.<br/>12 (Thereupon, Mr. Norwood and Mr. Lipman<br/>13 exited the deposition room briefly and<br/>14 returned.)<br/>15 BY MR. NORWOOD:<br/>16 Q. Just one or two more follow-ups and we'll be<br/>17 done, subject to them following up on my follow-up.<br/>18 If a patient comes to you--well, let me put<br/>19 it in context of Mr. Burt. In your view, Mr. Burt is<br/>20 exaggerating his pain, based upon what you see in the<br/>21 medical records, correct?<br/>22 A. Yes.<br/>23 Q. All right, and you are relying on those<br/>24 medical records in formulating your opinion, correct?<br/>25 A. I'm relying on the medical records and the</p>                                       | <p style="text-align: right;">Page 145</p> <p>1 Q. So '96 through up to 2012, those records and<br/>2 the treatment was based upon, it appears, this<br/>3 suggestion about scoliosis, correct?<br/>4 MR. BOOSE: Objection to form.<br/>5 A. I think the reference to scoliosis is in<br/>6 there as you stated, okay? So--<br/>7 BY MR. NORWOOD:<br/>8 Q. Repeatedly.<br/>9 A. It is. Yes, it is.<br/>10 Q. Okay.<br/>11 A. But that has not changed the treatment. His<br/>12 treatment would--he was being treated for a mild<br/>13 degenerative condition.<br/>14 Q. Well, but my point is that according to you,<br/>15 these medical records are wrong, right?<br/>16 MR. BOOSE: Objection to form.<br/>17 A. Well, I don't know that I would use--<br/>18 BY MR. NORWOOD:<br/>19 Q. As it relates to scoliosis.<br/>20 MR. BOOSE: Same objection.<br/>21 A. I don't know that I would use the word<br/>22 "wrong." I think the original radiology report is<br/>23 wrong, and I think that that word, "scoliosis," has<br/>24 been carried through there.<br/>25 Q. And therefore, it's wrong, in your view,</p>                          |

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| <p style="text-align: right;">Page 146</p> <p>1 because there's no scoliosis; right?</p> <p>2 A. Well, there is no scoliosis, and the word--</p> <p>3 let's put it this way: I think the word "scoliosis"</p> <p>4 from the beginning was incorrect,--</p> <p>5 Q. Right.</p> <p>6 A. --and I think they continued to keep that</p> <p>7 word in there.</p> <p>8 Q. And that carried over for decades; correct?</p> <p>9 A. Well,--</p> <p>10 MR. DUGAN: Form.</p> <p>11 A. --it carried on for a period of time.</p> <p>12 MR. BOOSE: Form.</p> <p>13 A. (Continuing) It carried on for a period of</p> <p>14 time.</p> <p>15 BY MR. NORWOOD:</p> <p>16 Q. Well, between 1996 and 2013, we've got some</p> <p>17 decades in there. You agree with that?</p> <p>18 A. Yes, we do.</p> <p>19 MR. DUGAN: One and change.</p> <p>20 MR. NORWOOD: All right.</p> <p>21 BY MR. NORWOOD:</p> <p>22 Q. So to the extent that those medical records</p> <p>23 ain't accurate, that would mean that in any way, that</p> <p>24 could change your opinion, right? If those medical</p> <p>25 records are inaccurate, right?</p>                                                   | <p style="text-align: right;">Page 148</p> <p>1 saying.</p> <p>2 BY MR. NORWOOD:</p> <p>3 Q. I mean, you don't know, your whole opinion</p> <p>4 is based upon the strength of these medical records,</p> <p>5 right?</p> <p>6 MR. DUGAN: Form and foundation;</p> <p>7 argumentative.</p> <p>8 MR. BOOSE: Join.</p> <p>9 BY MR. NORWOOD:</p> <p>10 Q. Is that right?</p> <p>11 A. Well, obviously, obviously, it's based upon</p> <p>12 everything, yes.</p> <p>13 Q. Well, but particularly in his, Ronald Burt's</p> <p>14 case, all you've got, you've never seen him, you've</p> <p>15 never talked to him, you don't know what he'd look</p> <p>16 like if he walked in here today; true?</p> <p>17 A. True.</p> <p>18 Q. All right, so everything is based on medical</p> <p>19 records, the accuracy of which you are not attesting</p> <p>20 that whether or not they're accurate, right?</p> <p>21 A. Well--</p> <p>22 Q. Is that right?</p> <p>23 A. Yes. Yes.</p> <p>24 Q. Nor are you attesting to the fact that</p> <p>25 whoever entered those records, be it one of these</p>                                                                                                                                                                                               |
| <p style="text-align: right;">Page 147</p> <p>1 A. Well, no, I don't--it's not going to change</p> <p>2 my opinion. I don't know--</p> <p>3 Q. Well, but your opinion is based on medical</p> <p>4 records, right?</p> <p>5 A. My opinion is based upon medical records,</p> <p>6 it's based upon the radiographic studies.</p> <p>7 Q. Right, and if anything about that is false,</p> <p>8 would that change your opinion?</p> <p>9 MR. DUGAN: Improper, incomplete</p> <p>10 hypothetical and depends on what?</p> <p>11 MR. BOOSE: Join.</p> <p>12 BY MR. NORWOOD:</p> <p>13 Q. Subject to that objection, if the</p> <p>14 radiological reports and findings are wrong, that</p> <p>15 could change your opinion; correct?</p> <p>16 A. Well, I looked at the x-rays.</p> <p>17 Q. Right.</p> <p>18 A. I looked at all the other x-rays, so my</p> <p>19 opinion is not going to change on the other x-rays</p> <p>20 because I saw those.</p> <p>21 Q. Well, you saw an x-ray that purports to be</p> <p>22 Mr. Burt's x-ray, right?</p> <p>23 MR. DUGAN: Is there some question that it's</p> <p>24 not?</p> <p>25 MR. NORWOOD: Well, I mean that's what I'm</p> | <p style="text-align: right;">Page 149</p> <p>1 defendants or whatever, and described what was</p> <p>2 purportedly being reported, you can't testify or</p> <p>3 verify the accuracy of that information, correct?</p> <p>4 MR. DUGAN: Form, foundation, incomplete,</p> <p>5 improper hypothetical.</p> <p>6 A. I obviously wasn't there when they entered</p> <p>7 that, no.</p> <p>8 BY MR. NORWOOD:</p> <p>9 Q. Right. Okay, and you don't know whether or</p> <p>10 not they had motivation to skew those medical records</p> <p>11 in a way to suggest they wouldn't be liable to</p> <p>12 Mr. Burt. You wouldn't have any information about</p> <p>13 that, either, would you?</p> <p>14 MR. DUGAN: Same objections; argumentative.</p> <p>15 A. I don't know those people.</p> <p>16 MR. BOOSE: Join.</p> <p>17 BY MR. NORWOOD:</p> <p>18 Q. And if, hypothetically, just purely</p> <p>19 hypothetical, if Mr. Ronald Burt has severe pain in</p> <p>20 his neck and his back, if he has that, let's just</p> <p>21 assume you believe him, would you do something</p> <p>22 additional to what has already been done with respect</p> <p>23 to try to figure out what is causing that severe neck</p> <p>24 and back pain?</p> <p>25 MR. DUGAN: Form, foundation, improper,</p> |

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| <p style="text-align: right;">Page 150</p> <p>1 incomplete hypothetical.</p> <p>2 MR. BOOSE: Join.</p> <p>3 A. No, for the reasons I mentioned earlier,</p> <p>4 sir. You have to have, based upon his history, his</p> <p>5 physical examination, putting all that together, he</p> <p>6 would have--if he, if he just told me he had severe</p> <p>7 pain with no objective physical findings to</p> <p>8 substantiate that, then I would not work it up</p> <p>9 further.</p> <p>10 BY MR. NORWOOD:</p> <p>11 Q. Okay, so you are saying, then, that--first</p> <p>12 of all, you are saying you don't believe Mr. Burt</p> <p>13 because it doesn't appear to be supported by what you</p> <p>14 see; correct?</p> <p>15 A. I don't know that I'd use the word I don't</p> <p>16 believe him. I said I think--I used the word that I</p> <p>17 think he's exaggerating.</p> <p>18 Q. Okay, he's exaggerating, but if you were</p> <p>19 convinced that he wasn't exaggerating and that he was</p> <p>20 he was really experiencing pain, what would you do in</p> <p>21 that case? You would just basically say "Here's your</p> <p>22 over-the-counter medicine, I'm sorry"?</p> <p>23 A. I would have done what was done for him. I</p> <p>24 would have ordered an antiinflammatory medication.</p> <p>25 Q. And that's it, even if he's having severe,</p>                         | <p style="text-align: right;">Page 152</p> <p>1 MR. NORWOOD: Okay, I have no further</p> <p>2 questions.</p> <p>3 MR. DUGAN: Nothing.</p> <p>4 MR. BOOSE: I have a few.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. BOOSE:</p> <p>7 Q. Doctor, scoliosis, when--when a medical</p> <p>8 professional says that someone has scoliosis, that's</p> <p>9 considered a diagnosis of the patient, right?</p> <p>10 A. Yes.</p> <p>11 Q. A diagnosis is the interpretation of</p> <p>12 objective or subjective information about the patient;</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. You dispute that Plaintiff has scoliosis,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Do you dispute any other diagnoses of the</p> <p>19 Plaintiff?</p> <p>20 A. That's--that is the only other diagnoses</p> <p>21 (sic). I--I think that initially, when this man had</p> <p>22 these x-rays in 1996, he probably did have some muscle</p> <p>23 spasm in his cervical area at that time, and so I</p> <p>24 think at that time he did have that, and--</p> <p>25 Q. I apologize. I believe you also said</p>                                                                                                                                                                                                  |
| <p style="text-align: right;">Page 151</p> <p>1 extreme pain that doesn't appear supported by what you</p> <p>2 see on the x-ray and those medical records?</p> <p>3 A. Yes, and that's--I think you asked me the</p> <p>4 question earlier about treating the patient in the</p> <p>5 office. I mean, you get to a point you work</p> <p>6 something, you figure out, and if I can't substantiate</p> <p>7 something, you know, I tell people, you know, that</p> <p>8 that's--you know, there's, there's nothing else there.</p> <p>9 Q. Well, but what you are saying is that merely</p> <p>10 from what you see, the degenerative disc condition you</p> <p>11 see on the x-ray doesn't suggest the level of pain</p> <p>12 that he is describing, correct?</p> <p>13 A. The amount of degenerative disc changes that</p> <p>14 he has are not consistent with his subjective</p> <p>15 complaints.</p> <p>16 Q. Right, and if his subjective complaints are</p> <p>17 accurate, if what he's relating is accurate, could</p> <p>18 that suggest something else other than this</p> <p>19 degenerative disc disease might be going on?</p> <p>20 MR. BOOSE: Objection, form; incomplete</p> <p>21 hypothetical.</p> <p>22 MR. DUGAN: Join.</p> <p>23 A. You would be concerned about that if you had</p> <p>24 other physical findings, et cetera, to substantiate</p> <p>25 that.</p> | <p style="text-align: right;">Page 153</p> <p>1 torticollis might not have been accurate; correct?</p> <p>2 A. What I said is torticollis is not really a</p> <p>3 radiographic finding. I said he may have had some--he</p> <p>4 may have really had some muscle spasm after that</p> <p>5 incident in 1996. I wouldn't really--I wouldn't</p> <p>6 really--I wouldn't really call that torticollis, but</p> <p>7 he would have--he may have had some muscle spasm at</p> <p>8 that time, so I think, I think torticollis is not</p> <p>9 really an appropriate term to use for that.</p> <p>10 Q. And that's, that's an interpretation of the</p> <p>11 radiological evidence, correct? Torticollis?</p> <p>12 A. Yes.</p> <p>13 Q. Other than the interpretation of physical,</p> <p>14 subjective, or radiological exams, other than those</p> <p>15 interpretations, do you dispute the medical records?</p> <p>16 A. No.</p> <p>17 Q. All right, so in other words, the</p> <p>18 information such as pulse, or the x-rays, things of</p> <p>19 that nature that any physician could review, those do</p> <p>20 you not dispute?</p> <p>21 A. That's correct.</p> <p>22 Q. Disagree with, rather.</p> <p>23 A. Yeah, that, what you said, yeah, that's</p> <p>24 correct.</p> <p>25 MR. BOOSE: Thank you.</p> |

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| <p style="text-align: right;">Page 154</p> <p>1 MR. DUGAN: Doctor, we're done here today.<br/>2 You have the right to review the transcript to see if<br/>3 it's been taken down correctly, or you can waive your<br/>4 signature. That choice is yours. What's your<br/>5 preference?<br/>6 THE WITNESS: I'll waive.<br/>7 MR. DUGAN: Signature waived.<br/>8 MR. NORWOOD: Thank you, sir. Appreciate<br/>9 it.<br/>10 THE WITNESS: Thank you.<br/>11 (Thereupon, at 12:44 P.M., the<br/>12 deposition was concluded.)<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p style="text-align: right;">Page 156</p> <p>1 propounded by counsel and remarks and objections of<br/>2 counsel thereto, and is in all respects a full, true,<br/>3 correct and complete transcript of the questions<br/>4 propounded to and the answers given by said witness;<br/>5 that signature of the deponent was waived by agreement<br/>6 of counsel.<br/>7 I further certify that I am not of<br/>8 counsel or attorney for either of the parties to said<br/>9 suit, not related to nor interested in any of the<br/>10 parties or their attorneys.<br/>11 Witness my hand and notarial seal at<br/>12 St. Louis, Missouri, this 23rd day of May, 2017.<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19 <br/>20 J. Bryan Jordan<br/>21 Certified Court Reporter<br/>22 State of Missouri No. 532<br/>23<br/>24<br/>25</p> |
| <p style="text-align: right;">Page 155</p> <p>1 State of Missouri. )<br/>2 ) SS.<br/>3 City of St. Louis )<br/>4 I, J. Bryan Jordan, a Notary Public in<br/>5 and for the State of Missouri, duly commissioned,<br/>6 qualified and authorized to administer oaths and to<br/>7 certify to depositions, do hereby certify that<br/>8 pursuant to Notice in the civil cause now pending and<br/>9 undetermined in the Circuit Court of the City of<br/>10 St. Louis, State of Missouri, to be used in the<br/>11 hearing of said cause before said court, I was<br/>12 attended at the offices of Petkovich Orthopedic and<br/>13 Spine Care, LLC, 2821 North Ballas Road, Suite C70<br/>14 St. Louis, Missouri, by the aforesaid witness and by<br/>15 the aforesaid attorneys, on the 11th day of May, 2017.<br/>16 The said witness, being of sound mind<br/>17 and being by me first carefully examined and duly<br/>18 cautioned and sworn to testify the truth, the whole<br/>19 truth, and nothing but the truth in the case<br/>20 aforesaid, thereupon testified as is shown in the<br/>21 foregoing transcript, said testimony being by me<br/>22 reported in shorthand and caused to be transcribed<br/>23 into typewriting, and that the foregoing pages<br/>24 correctly set forth the testimony of the<br/>25 aforementioned witness, together with the questions</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |